SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 46

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES A. WHITE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

DOCKET ENTRIES

66 C R 254

THE UNITED STATES,

v.

JAMES A. WHITE.
SAM MINERVA.

* * * * *

Date	Proceedings
4/18/66	Filed Indictment
*	* * * *
4/18/66	Order indictment returned in open court, bond posted in 66 CR 34 to stand as bond in this instance —Campbell, J.
4/19/66	Defendant White, with counsel, enters plea of not guilty. Defendant White given ten (10) days to file any motions he may deem appropriate. Government given five (5) days thereafter to reply to motions. Disposition of motions, if filed, set for May 13, 1966 at 2:00 P.M. Cause set for trial as to both Defendants on June 1, 1966 at 10 A.M. Cause as to Defendant Sam Minerva set for April 25, 1966 at 10 A.M. for arraignment and plea. Bail of Defendant White of $25,000.00 posted in Cause 66 CR 34 shall stand as bail for Defendant White in Cause 66 CR 254. —Hoffman, J.
4/25/66	Cause continued to May 13, 1966 at 2 P.M. for arraignment and plea as to Defendant Minerva.—Hoffman, J.
5/6/66	Filed Appearance of Stanley A. Bass as Counsel for Defendant White with Affidavit Under G. R. 39.
5/13/66	On motion of Defendant White for leave to file

Date	Proceedings
	instanter pre-trial motions, (1) Motion for Bill of Particulars, (2) Motion for preliminary hearing or, in the alternative, Petition for Writ of Mandamus and Memorandum of Law in Support of motion, denied, because not timely.—HOFFMAN, J.
5/13/66	Cause as to Defendant Minerva continued to June 1, 1966 at 10 A.M. for arraignment and plea.—HOFFMAN, J.
5/27/66	Filed notice of motion and motion for continued date for trial.
5/27/66	On motion of Defendant, Cause reset from June 1, 1966 at 10 A.M. to June 6, 1966 at 10 A.M. for trial.—Hoffman, J.
6/6/66	Filed appearance of Chauncey Eskridge as attorney for James A. White and affidavit re G R 39.
6/6/66	Cause continued to June 14, 1966 at 10 A.M. for trial as to Defendant White. Cause as to Defendant Minerva continued to June 27, 1966 for arraignment and plea.—Hoffman, J.
6/14/66	Cause continued to June 20, 1966 at 10 A.M. for trial as to Defendant White.—Hoffman, J.
6/20/66	Cause continued to June 27, 1966 at 10 A.M. for trial as to Defendant White.—Hoffman, J.
6/27/66	Cause continued to September 13, 1966 at 10 A.M. for trial as to Defendant White and for arraignment and plea as to Defendant Minerva.—Hoffman, J.
7/5/66	Filed Notice and Motion re defendant's motions (to JJH).
7/11/66	Defendants motion to reconsider and grant leave to file motions is entered and continued to September 13, 1966.—Austin, J.
9/13/66	Motion of Defendant James A. White that this Court reconsider and grant said Defendant leave to file motions heretofore presented and denied because not timely filed, is, hereby, denied.—Hoffman, J.
9/13/66	Cause continued to September 27, 1966 at 10 A.M. for trial as to Defendant White and for arraignment and plea as to Defendant Minerva.—Hoffman, J.

Date	Proceedings
9/20/66	Motion of Defendant James A. White for restraining order denied, for failure to comply with local rules.—Hoffman, J.
9/27/66	Cause continued to September 28, 1966 at 10 A.M. for trial as to Defendant White and for arraignment and plea as to defendant Minerva.—Hoffman, J.
9/28/66	Cause continued to October 4, 1966 at 10 A.M. for trial as to defendant White and for arraignment and plea as to Defendant Minerva.—Hoffman, J.
10/4/66	Cause continued to October 5, 1966 at 10 A.M. for trial as to Defendant White and arraignment and plea as to Defendant Minerva.—Hoffman, J.
10/5/66	Cause continued to October 13, 1966 at 10 A.M. for trial as to Defendant White and for arraignment and plea as to Defendant Minerva.—Hoffman, J.
*9/20/66	Filed Motion for Restraining Order, Notice, and Memorandum in support of Motion for Restraining Order of Defendant James A. White. (To JJH) (66 CR 255)
10/13/66	Cause continued to Oct. 20, 1966 at 10 A.M. for trial as to defendant White and for arraignment and plea as to defendant Minerva.—Hoffman, J.
10/13/66	Cause continued to Oct. 20, 1966 at 10 A.M. for trial as to defendant White and for arraignment and plea as to defendant Minerva.—Hoffman, J.
10/20/66	Cause continued to October 27, 1966 at 10 A.M. for trial as to Defendant White and arraignment and plea as to Defendant Minerva.—Hoffman, J.
10/27/66	Cause continued to November 2, 1966 at 10 A.M. for trial as to defendant White and for arraignment and plea as to Defendant Minerva.—Hoffman, J.
11/2/66	Cause continued to November 16, 1966 at 10 A.M. for trial as to Defendant White and for arraignment and pleas to Defendant Minerva.— Hoffman, J.
11/4/66	Filed Notice.
11/4/66	Filed Motion for consolidation of indictments (To: JJH)

Date	Proceedings
11/9/66	Filed Notice of motion and motion for separate trial for White (To JJH)
11/9/66	By agreement, motion to consolidate indictments 66 CR 255 and 66 CR 254 for trial, allowed.—Hoffman, J.
11/9/66	Leave to Defendant White to file instanter his motion to sever defendants and counts. Government given five (5) days to file memorandum in opposition to motion.—Hoffman, J.
11/10/66	(By agreement: motion of the Government to sever Sam Minerva from Counts 1, 2, 3, 4 and 6 of Indictment No. 66 CR 254 allowed, and motion of the Government to dismiss Count 5 of Indictment 66 CR 254 allowed.) Defendant White's motion for a separate trial on Counts 5 and 6 of Indictment No. 66 CR 254, or in the alternative, that the Government be compelled to elect between said Counts and other Counts contained in Indictment Nos. 66 CR 254 and 66 CR 255 is hereby denied. U.S. Attorney directed to prepare and submit draft order on Monday, November 14, 1966 at 10 A.M.—Hoffman, J. (Also on 66 CR255)
11/14/66	Ordered that in Counts 1, 2, 3, 4, and 6 of Indictment No. 66 CR 254, the defendant, Sam Minerva, be severed from the defendant James A. White, for purposes of trial of James A. White; and further, that Count 5 of Indictment 66 CR 254 be dismissed. Further ordered that defendant James A. White's motion for a separate trial on Counts 5 and 6 of Indictment 66 CR 254 or in the alternative, that the Government be compelled to elect between said Counts and other Counts contained in indictment Nos. 66 CR 254 and 66 CR 255, is hereby denied. (DRAFT)—Hoffman, J. (Also on 66 CR 255)
11/16/66	Cause called for as to Defendant White. Jury selected and sworn. ******** Opening statements heard for the Government. Defendant waives opening statement. Evidence heard in part for the Government. Cause continued to November 17, 1966 at 10:00 A.M.—Hoffman, J.

Date	Proceedings
11/17/66	Leave to attorney Stanley Bass to withdraw as associate Counsel for defendant with the agreement of the defendant made in open Court. Further evidence heard for the Government. Cause continued to November 18, 1966 at 10 A.M.—Hoffman, J.
11/18/66	Further evidence heard for the Government. Cause continued to November 21, 1966 at 10:00 A.M.—Hoffman, J.
11/21/66	Further evidence heard for the Government. Government rests. Motion of Defendant to dismiss Count #3 of Indictment 66 CR 254 denied. Motion of Defendant to dismiss Count #4 of Indictment 66 CR 254 denied. Motion of Defendant to dismiss all counts of Indictments 66 CR 254 and 66 CR 255 denied. Evidence heard in part for Defendant. Cause continued to November 22, 1966 at 10 A.M.—Hoffman, J.
11/22/66	Further evidence heard for Defendant. Defendant rests. No rebuttal evidence, both sides rest. Defendants renewed motions unsupported by argument and not restated made, or rather the motions made at the close of the Governments case, denied. Arguments heard. The Court instructs the jury, alternates discharged, Marshals sworn. Jury retires to consider its verdict or verdicts. (By agreement, jury to sign, seal and separate, polling of jury waived. DRAFT) Marshal ordered to furnish supper for twelve (12) jurors and two (2) deputy Marshals. Cause continued to November 23, 1966 at 10 A.M. —Hoffman, J.
11/23/66	Filed verdict of guilty for James A. White.
11/23/66	Defendant fails to appear. Enter order of bond forfeiture as to Defendant White in consecutive cases 66 CR 254 and 66 CR 255 respectively and Bench warrant to issue. (Ordered Chauncey Eskridge, attorney for defendant, is ordered held in direct contempt of this Court for failure to appear, as aforesaid, and he is fined $100.00 and costs and remanded to the custody of the U.S. Marshal until such fine is paid. (DRAFT)). The Jury returns the following verdicts. In Cause 66 CR 254—We, the Jury, find

Date	Proceedings
11/23/66	the defendant James A. White, guilty as charged in the indictment. In cause 66 CR 255, We, the Jury, find the defendant James A. White guilty as charged in the Indictment. Judgements on verdicts in Cause 66 CR 254 and 66 CR 255 respectively. Cause continued to November 30, 1966 at 10 A.M. for disposition, and/or disposition of motions which may be made or filed. Defendant remanded to the custody of the U.S. Marshal. On motion of respondent Eskridge, order and judgment holding respondent Eskridge in contempt be and is vacated and set aside., etc. Motion of Defendant for his enlargement on bail pending disposition set for November 30, 1966, denied. Motion of Defendant to vacate order of bond forfeiture and to recall Bench warrant denied.—Hoffman, J.
11/29/66	Filed appearance of William R. Ming, Jr. as additional counsel for James A. White and affidavit re G R 39
11/28/66	Filed Motion for judgment of acquittal and/or for new trial. Filed motion to vacate forfeiture of bail (Both for White)
11/30/66	Filed information setting forth prior conviction of James A. White.
11/30/66	Motion of Defendant for judgment of acquittal notwithstanding the verdict denied. Alternate motion for a new trial denied. Leave to the Government to file Information setting forth prior conviction of Defendant White and certified copy of Judgment and Commitment, in 55 CR 51. In cause 66 CR 254, Defendant White committed to the custody of the Attorney General for imprisonment for a period of 25 years on each of Counts 1, 2, 3, 4 and 6 of the Indictment and fined $5,000.00 on each of said Counts 1, 2, 3, 4 and 6 and costs of prosecution. Sentences shall run concurrently and fines cumulative. Defendant stand committed until fines and costs are paid. In Cause 65 CR 255 Defendant White committed to the custody of the Attorney General for imprisonment for a period of twenty-five (25) years on each of Counts 1 and 2 of the

Date	Proceedings
11/30/66	Indictment. and fined $5,000.00 on each of said counts 1 and 2 and costs of prosecution. Sentences shall run concurrently and fine cumulative. Defendant stand committed until fines and costs are paid, etc. Sentences this day imposed as to Defendant White in cause 66 CR 255 shall run concurrently with the sentences imposed on said Defendant in cause 66 CR 254. Fines assessed against Defendant White in cause 66 CR 255 shall be cumulative to the fines assessed against Defendant in cause 66 CR 254. Defendant committed to the custody of the U.S. Marshal without bail. Defendant's motion to vacate order of bond forfeiture allowed. Defendant's motion to permit Defendant to be confined to the Cook County Jail for duration of his appeal denied. (2 DRAFTS)—Hoffman, J.
* * * * *	
11/30/66	Cause continued to December 1, 1966 at 10 A.M. for an arraignment and plea as to Defendant Minerva.—Hoffman, J.
12/1/66	Cause continued to January 3, 1967 at 10 A.M. for report and for disposition.—Hoffman, J. (Minerva)
* * * * *	
12/8/66	Filed Notice of Appeal of defendant White
* * * * *	

DOCKET ENTRIES

66 C R 255

THE UNITED STATES,

v.

JAMES A. WHITE.

* * * * *

Date	Proceedings
4/18/66	Filed Indictment
*	* * * *
4/18/66	Order indictment returned in open court; bond posted in 66 CR 34 to stand as bond in this instance —Campbell, J.
4/19/66	Defendant, with Counsel, enters plea of not guilty. Defendant given ten (10) days to file any motions he may deem appropriate. Government given five (5) days thereafter to reply to motions. Disposition of motions (if filed) set for May 13, 1966 at 2 P.M. Cause set for trial on June 1, 1966 at 10 A.M. Bail of Defendant White of $2500.00 posted in Cause 66 CR 34 shall stand as bail for defendant in cause 66 CR 255.—Hoffman, J.
5/6/66	Filed Appearance of Stanley A. Bass as counsel for Defendant White with Affidavit Under G. R. 39.
5/13/66	Defendant's motion for leave to file instanter pre-trial motions for Bill of Particulars denied because not timely.—Hoffman, J.
5/27/66	Filed notice of motion and motion to continued date for trial.
5/27/66	On motion of Defendant, cause reset from June 1, 1966 at 10 A.M. to June 6, 1966 at 10 A.M. for trial.—Hoffman, J.
6/6/66	Filed appearance of Chauncey Eskridge as attorney for James A. White and affidavit re G R 39.
6/6/66	Cause continued to June 14, 1966 at 10 A.M. for trial.—Hoffman, J.

Date	Proceedings
6/14/66	Cause continued to June 20, 1966 at 10 A.M. for trial.—Hoffman, J.
6/20/66	Cause continued to June 27, 1966 at 10 A.M. for trial.—Hoffman, J.
6/27/66	Cause continued to September 13, 1966 at 10 A.M. for trial.—Hoffman, J.
7/5/66	Filed Notice and Motion re defendant's motions. (to JJH)
7/11/66	Defendant's motion to reconsider and grant leave to file motions is entered and continued to September 13, 1966.—Austin, J.
9/13/66	Motion of Defendant James A. White that this Court reconsider and grant said Defendant leave to file motions heretofore presented and denied because not timely filed is hereby denied.—Hoffman, J.
9/13/66	Cause continued to September 27, 1966 at 10:00 A.M. for trial.—Hoffman, J.
9/20/66	Motion of Defendant James A. White for restraining order denied for failure to comply with local rules.—Hoffman, J.
9/27/66	Cause continued to September 28, 1966 at 10 A.M. for trial.—Hoffman, J.
9/28/66	Cause continued to October 4, 1966 at 10 A.M. for trial.—Hoffman, J.
10/4/66	Cause continued to October 5, 1966 at 10 A.M. for trial.—Hoffman, J.
10/5/66	Cause continued to October 13, 1966 at 10 A.M. for trial.—Hoffman, J.
9/20/66	Filed Motion for Restraining Order, Notice, and Memorandum in Support of Motion, for Restraining Order of Defendant James A. White. (To JJH) (66 CR 254)
10/13/66	Cause continued to Oct. 20, 1966 at 10 A.M. for trial.—Hoffman, J.
10/20/66	Cause continued to October 27, 1966 at 10 A.M. for trial.—Hoffman, J.
10/27/66	Cause continued to November 2, 1966 at 10 A.M. for trial.—Hoffman, J.
11/2/66	Cause continued to November 16, 1966 at 10 A.M. for trial.—Hoffman, J.

Date	Proceedings
11/4/66	Filed Notice of motion.
11/4/66	Filed Motion for consolidation of indictments (To: JJH) (66 CR 254)
11/9/66	Filed notice of motion and motion for separate trial. (To JJH)
11/9/66	By agreement, motion to consolidate indictments 66 CR 255 and 66 CR 254 for trial, allowed.—Hoffman, J.
11/9/66	Leave to Defendant White to file instanter his motion to sever defendants and counts. Government given five (5) days to file memorandum in opposition to motion.—Hoffman, J.
11/10/66	(By agreement, motion of the Government to sever Sam Minerva from Counts 1, 2, 3, 4, and 6 of Indictment No. 66 CR 254 allowed, and motion of the Government to dismiss Count 5 of Indictment 66 CR 254 allowed.) Defendant White's motion for a separate trial on Count 5 and 6 of Indictment 66 CR 254, or in the alternative, that the Government be compelled to elect between said Counts and other Counts contained in Indictment Nos. 66 CR 254 and 66 CR 255 is hereby denied. U.S. Attorney is directed to prepare and submit draft order on Monday, November 14, 1966 at 10 A.M.—Hoffman, J. (same motion on 66 CR 254.)
11/14/66	Ordered that in Counts 1, 2, 3, 4, and 6 of Indictment 66 CR 254 the defendant Sam Minerva, be severed from the defendant James A. White; and further, that Count 5 of indictment No. 66 CR 254 be dismissed. Further ordered that defendant James A. White's motion for a separate trial on Counts 5 and 6 of Indictment 66 CR 254, or in the alternative, that the Government be compelled to elect between said Counts and other Counts contained in Indictment Nos. 66 CR 254 and 66 CR 255 is hereby denied. —Hoffman, J. (Same motion and draft on 66 CR 254).
11/16/66	Cause called for as to Defendant White. Jury selected and sworn * * * *

Date	Proceedings
11/17/66	Leave to Attorney Stanley Bass to withdraw as associate counsel for defendant with the agreement of the defendant made in open Court. Further evidence heard for the Government. Cause continued to November 18, 1966 at 10 A.M.—Hoffman, J.
11/18/66	Further evidence heard for the Government. Cause continued to November 21, 1966 at 10 A.M.—Hoffman, J.
11/21/66	Further evidence heard for the Government. Government rests. Motion of Defendant to dismiss Count #3 of Indictment 66 CR 254 denied. Motion of Defendant to dismiss Count #4 of Indictment 66 CR 254 denied. Motion of defendant to dismiss all counts of Indictments 66 CR 254 and 66 CR 255 denied. Evidence heard in part for Defendant. Cause continued to November 22, 1966 at 10 A.M. —Hoffman, J.
11/22/66	Further evidence heard for Defendant. Defendant rests. No rebuttal evidence, both sides rest. Defendant's renewed motions unsupported by argument and not restated made or, rather the motions made at the close of the Government's case, denied. Arguments heard. The Court instructs the Jury, alternates discharged, Marshals sworn. Jury retires to consider its verdict or verdicts. (By agreement, jury to sign seal andseparate, polling of jury waived.) (DRAFT) Marshal ordered to furnish supper for twelve (12) jurors and two (2) deputy Marshals. Cause continued to November 23, 1966 at 10:00 A.M.—Hoffman, J.
11/23/66	Defendant fails to appear. Enter order of bond forfeiture as to Defendant White in consolidated cases 66 CR 254 and 66 CR 255 respectively, and Bench warrant to issue. (Ordered Chauncey Eskridge, attorney for Defendant is ordered held in direct contempt of this Court for failure to appear, as aforesaid, and he is fined $100.00 and costs and remanded to the custody of the U.S. Marshal until such fine is paid. (DRAFT)) The Jury returns the following verdicts. In Cause 66 CR 254—"We, the Jury, find the defendant, James A. White, guilty as

Date	Proceedings
11/23/66	charged in the indictment." In cause 66 CR 255, "We, the Jury find the defendant, James A. White, guilty as charged in the Indictment." Judgment on verdicts in Cause 66 CR 254 and 255 respectively. Cause continued to November 30, 1966 at 10:00 A.M. for disposition and/or disposition of motions which may be made or filed. Defendant remanded to the custody of the U.S. Marshal. On motion of respondent Eskridge, order and judgment holding respondent Eskridge in contempt be and is vacated and set aside, etc. Motion of defendant for his enlargement on bail pending disposition set for November 30, 1966, denied. Motion of Defendant to vacate order of bond forfeiture and to recall Bench Warrant denied.—Hoffman, J.
11/23/66	Filed verdict on James A. White of Guilty as charged.
11/29/66	Filed appearance of William R. Ming, Jr., as attorney (additional attorney) for James A. White and affidavit re G R 39.
11/28/66	Filed Motion for judgment of acquittal and/or for new trial.
11/28/66	Filed motion to vacate forfeiture of bail.
11/30/66	Filed information setting forth prior conviction of James A. White.
*	* * * *
11/30/66	Motion of Defendant for judgment of acquittal notwithstanding the verdict denied. Alternate motion for a new trial denied. Leave to the Government to file Information setting forth prior conviction of Defendant White and certified copy of Judgment and commitment 55 CR 51. In cause 66 CR 254, defendant White committed to the custody of the Attorney General for imprisonment for a period of 25 years on each of Counts 1, 2, 3, 4 and 6 of the Indictment and fined $5,000.00 on each of said Counts 1, 2, 3, 4 and 6 and costs of prosecution. Sentences shall run concurrently and fines cumulative. Defendant stands committed until fines and

Date	Proceedings
11/30/66	costs are paid. In cause 66 CR 255, defendant White committed to the custody of the Attorney General for imprisonment for a period of twenty five (25) years on each of Counts 1 and 2 of the Indictment, and fined $5,000.00 on each of said counts 1 and 2, and costs of prosecution. Sentences shall run concurrently and fines cumulative. Defendant stands committed until fines and costs are paid, etc. Sentences this day imposed as to Defendant White in cause 66 CR 255 shall run concurrently with the sentences imposed on said Defendant [illegible]use 66 CR 254. Fines assessed against Defen[illegible]ite in cause 66 CR 255 shall be cumulative [illegible] fines assessed against Defendant in Cause 66 CR 254. Defendant committed to the custody of the U.S. Marshal without bail. Defendant's motion to vacate order of bond forfeiture allowed. Defendant's motion to permit Defendant to be confined in the Cook County Jail for duration of his appeal denied. (2 Drafts)—Hoffman, J.
11/30/66	Filed Certified copy Commitment of James White of May 10, *1955*, in cause No. 55 CR 51.
*	* * * *
12/8/66	Filed Notice of Appeal of defendant White * * *
*	* * * *

INDICTMENT

(Filed Apr. 18, 1966.)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 66 CR 254

UNITED STATES OF AMERICA

v.

JAMES A. WHITE AND SAM MINERVA

Vio: Title 26, United States Code, Section 4705 (a), Internal Revenue Code of 1954; Title 21, United States Code, Section 174

The April, 1966 Grand Jury charges:

On or about December 16, 1965, at Chicago, in the Northern District of Illinois, Eastern Division, James A. White and Sam Minerva, defendants, did unlawfully sell, barter, exchange and give away approximately 58.320 grams of heroin, a narcotic drug, to Harvey Jackson not in pursuance of a written order from the said Harvey Jackson on a form issued in blank for that purpose by the Secretary of the Treasury of the United States, or his authorized delegate; in violation of Title 26, United States Code, Section 4705 (a), Internal Revenue Code of 1954.

Count II

The April, 1966 Grand Jury further charges:

On or about December 16, 1965, at Chicago, in the Northern District of Illinois, Eastern Division, James A. White and Sam Minerva, defendants, fraudulently and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of approximately 58.320 grams of heroin, a narcotic drug, after it had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported

and brought into the United States contrary to law; in violation of Title 21, United States Code, Section 174.

Count III

The April, 1966 Grand Jury further charges:

On or about December 29, 1965, at Chicago, in the Northern District of Illinois, Eastern Division, James A. White and Sam Minerva, defendants, did unlawfully sell, barter, exchange and give away approximately 131.976 grams of heroin, a narcotic drug, to Harvey Jackson not in pursuance of a written order from the said Harvey Jackson on a form issued in blank for that purpose by the Secretary of the Treasury of the United States, or his authorized delegate; in violation of Title 26, United States Code, Section 4705 (a), Internal Revenue Code of 1954.

Count IV

The April, 1966 Grand Jury further charges:

On or about December 29, 1965, at Chicago, in the Northern District of Illinois, Eastern Division, James A. White and Sam Minerva, defendants, fraudulently and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of approximately 131.976 grams of heroin, a narcotic drug, after it had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law; in violation of Title 21, United States Code, Section 174.

Count V

The April, 1966 Grand Jury further charges:

On or about January 8, 1966, at Chicago, in the Northern District of Illinois, Eastern Division, Sam Minerva, defendant, did unlawfully sell, barter, exchange and give away approximately 1,119.610 grams of heroin, a narcotic drug, to James A. White not in pursuance of a written order from the said James A. White on a form issued in blank for that purpose by the Secretary of the Treasury of the United States, or his authorized delegate; in violation

of Title 26, United States Code, Section 4705 (a), Internal Revenue Code of 1954.

Count VI

The April, 1966 Grand Jury further charges:

On or about January 8, 1966, at Chicago in the Northern District of Illinois, Eastern Division, James A. White and Sam Minerva, defendants, fraudulently and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of approximately 1,119.610 grams of heroin, a narcotic drug, after it had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law; in violation of Title 21, United States Code, Section 174.

A True Bill, (s) ——, ——, Foreman.

(s) ——, ——, United States Attorney.

JJM:alf

INDICTMENT

(Filed April 18, 1966)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 66 CR 255

UNITED STATES OF AMERICA

v.

JAMES A. WHITE

Vio: Title 26, United States Code, Section 4705 (a), Internal Revenue Code of 1954, Title 21, United States Code, Section 174

The April, 1966 Grand Jury charges:

On or about December 9, 1965 at Chicago, in the Northern District of Illinois, Eastern Division, JAMES A. WHITE, defendant, did unlawfully sell, barter, exchange and give away approximately 29.651 grams of heroin, a narcotic drug, to Harvey Jackson not in pursuance of a written order from the said Harvey Jackson on a form issued in blank for that purpose by the Secretary of the Treasury of the United States, or his authorized delegate; in violation of Title 26, United States Code, Section 4705 (a), Internal Revenue Code of 1954.

Count II

The April, 1966 Grand Jury further charges:

On or about December 9, 1965, at Chicago, in the Northern District of Illinois, Eastern Division, JAMES A. WHITE, defendant, fraudulently and knowingly did receive, conceal, buy, sell and facilitate the transportation, concealment and sale of approximately 29.651 grams of heroin, a narcotic drug, after it had been imported and brought into the United States contrary to law, knowing that the said nar-

cotic drug had theretofore been imported and brought into the United States contrary to law; in violation of Title 21, United States Code, Section 174.

A True Bill, (s) ——, ——, Foreman.

(s) ——, ——, United States Attorney.

JJM:alf

• • • • •

IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

66 C R 254
66 C R 255

UNITED STATES OF AMERICA, Plaintiff,

vs.

JAMES A. WHITE, Defendant.

Transcript of proceedings had at the trial of the above-entitled cause before the Hon. JULIUS J. HOFFMAN and a jury commencing on the 16th day of November, 1966, at the hour of 10:00 o'clock a.m.

PRESENT:

Hon. EDWARD V. HANRAHAN, United States Attorney, by Mr. J. J. MCDONNELL, Assistant United States Attorney, appeared on behalf of the government;

Mr. CHAUNCEY ESKRIDGE, appeared on behalf of the defendant.

[2-8] * * *

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[9] * * * CARL L. JACKSON, a witness called by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McDonnell:

* * * * *

[10] Q. How long have you been so employed as a federal narcotic agent in the Chicago area?

A. Five years.

Q. Calling your attention, sir, to the month of December, 1965, did you have occasion to know and to speak to a man named Harvey Jackson?

A. Yes, I did.

Q. In what capacity did you speak to him, sir?

A. As an agent of the Federal Bureau of Narcotics, and he was working at that time as an informant for the Federal Bureau of Narcotics.

Q. Just to set the record straight, Mr. Jackson, is he any relation by marriage or by blood to you?

A. He is not.

Q. Do you know where Harvey Jackson is today?

A. No, I do not.

Q. When was the last time that you saw the said Harvey Jackson?

A. January 5th of this year.

Q. Have you and other agents of the Federal Bureau of [11] Narcotics attempted to locate Harvey Jackson?

A. We have.

Q. What have you done to locate him, sir? Please tell the ladies and gentlemen of the jury.

A. We have visited his residence at 6141 South Drexel Boulevard. We have visited areas where he was known to hang out. We visited a place where he had worked at one time previously. We checked with Missing Persons, and the FBI has also made endeavors to locate him.

• • • • •

[12] Q. Specifically, Agent Jackson, calling your attention to December 9th at around 6:00 p.m., did you have occasion to be in the offices of the Federal Bureau of Narcotics?

A. Yes, I did.

Q. Were you there alone?

A. No, I wasn't.

Q. Who was with you?

A. Agents Robert J. DeFauw and William C. Kirstann.

Q. What occurred there?

A. We had a conversation.

Q. Pursuant to that conversation, did you have occasion to go somewhere?

A. Yes, I did.

Q. Where did you go?

[13] A. I went with Agents Robert J. DeFauw and William C. Kirstann to 57th and the Outer Drive.

Q. Calling your attention to around 7:00 p.m.—Strike that, please.

What happened when you got to 57th and Lake Shore Drive?

A. We waited there until approximately 7:00 p.m., at which time we were joined by Harvey Jackson who met with us.

Q. What happened when you got to 57th and Lake Shore Drive around 7:00?

A. We were joined there by Harvey Jackson.

Q. What happened when Harvey Jackson came there?

A. When Harvey Jackson arrived, we had a conversation with him, after which he was searched by Agent DeFauw for money and narcotics, he had neither on his person. His automobile was then searched thoroughly for money or narcotics and I found neither in the automobile. Agent DeFauw then placed the radio kel transmitter set on his person, strapped it to him, and we had a further conversation.

[14] Q. Tell the ladies and gentlemen of the jury just what a radio kel set transmitter is, please.

A. It is a small transistorized radio transmitting device which transmits voices or sounds which can be picked up on receiving units from this device.

Q. Have you used such a device before in your professional capacity?

A. Yes, I have.

Q. How many times have you used such device?

A. Many times.

• • • • •

Q. Now what occurred after the kel set was strapped on [15] and the set was tested?

A. Harvey Jackson and I drove to his residence at 6141 Drexel, entered that residence and waited there.

Q. What is located at 6141 South Drexel, if you remember?

A. It is a 2-story frame building that sets back about 40 yards—not 40 yards, about 50 feet from the street.

Q. You same frame. You mean a wooden frame building, is that correct?

A. Yes.

Q. Do you have any idea about what time you arrived there?

A. About 7:45.

Q. Calling your attention to approximately 8:00 p.m. on December 9, 1965, do you know what happened at that time?

A. Yes, I do.

[16] Q. Would you tell the ladies and gentlemen of the jury, please?

A. Harvey Jackson and I were standing in the front room, that is, the living room of his residence when we saw the defendant James White drive up in a black 1962 convertible Cadillac and park in front of the residence. James White left the car and walked to the gateway to the yard of the residence, opened the gate, and then I left the front room and went to the kitchen closet and concealed myself in the kitchen closet.

Q. Would you describe the kitchen closet for us?

A. The kitchen closet is the width of the two doors in the back door at the rear of the court room.

Mr. McDonnell: Let the record indicate approximately six feet, Counsel?

The Court: The witness has given his impression. Evidently counsel isn't interested in joining you in an estimate. They are under no obligation to.

Mr. McDonnell: Yes, sir. May I continue, your Honor?

[17] The Court: You certainly may.

By Mr. McDonnell:

Q. Continue, Agent Jackson, with your description of the closet.

A. There are two doors that open similar to the two doors in the back. They come together, pull out, not in. They pull out together.

Q. They pull out towards the kitchen part, is that correct?

A. That is right.

Q. Now when you say you secreted yourself in the closet, what did you do?

A. After I entered the closet, I cracked the door of the closet where I could observe the area of the kitchen,—that is, more specifically the kitchen table.

Q. What happened after you secreted yourself in the closet?

A. There was a knock on the door. Jimmy White was let inside the apartment.

The Court: Who is Jimmy White?

The Witness: James White, I am sorry, your Honor. James White, the defendant.

By Mr. McDonnell:

[18] Q. Do you see the man that you have been calling Jimmy White and that you have just now referred to as James White? Do you see him in this courtroom?

A. Yes, I do.

Q. Would you point him out?

A. He is seated there at the counsel table between the two counsel.

The Court: Which one.

The Witness: The one in the middle in the brown suit.

Mr. McDonnell: May the record reflect the fact that the witness has pointed out the defendant James White?

The Court: The record may indicate that the witness has identified the defendant in open court.

By Mr. McDonnell:

Q. What transpired then, Agent Jackson?

A. After the knock on the door, Harvey Jackson went to the door, opened the door, and he and James White came through the living room into the kitchen and Harvey Jackson took a seat at the kitchen table.

[19] Q. Was there any conversation?

A. Yes, there was.

Q. Could you overhear that conversation?

A. Yes, I could.

Q. Would you relate it to the ladies and gentlemen of the jury?

A. Yes.

Q. Relate the conversation you overheard as best you can recollect.

Mr. Eskridge: Objection, your Honor.

The Court: Why?

Mr. Eskridge: The witness has testified that one Harvey Jackson he is unable to find. Now this conversation is alleged to have taken place with a third party present. We have no way of telling what the conversation was if

a conversation was had with one Harvey Jackson.

The Court: Except he said the defendant was there. I overrule the objection.

By Mr. McDonnell:

Q. Would you please state the conversation to the best of your memory?

[20] A. Harvey Jackson greeted James White, said "Hello."

Harvey Jackson said, "Come into the kitchen."

They entered the kitchen and Harvey Jackson took a seat. James White stood at the table and then he took from his right jacket pocket a blue wrapped package and laid it on the table. Harvey Jackson asked James White how many ounces were in the package. James White said, "One good ounce."

Harvey Jackson said, "When will I get some more?"

James White said, "Just wait, I'll come by tomorrow and pick the money up first."

Q. Was anything else said at that time?

A. Not to my knowledge, with the exception that James White told Harvey Jackson that he had a few stops to make and that he was going to leave and he would see him tomorrow morning.

Q. Did James White leave then?

A. Yes, he did.

Q. Incidentally, the James White you refer to now, is that the James White you referred to previously as Jimmy White?

[21] A. That is correct.

Q. And that is the defendant?

A. That is correct.

Q. After James White left, what did you do?

A. After James White left, I picked the blue wrapped package up from the table, put it in my pocket and walked to the door where I observed James White go into his car, enter his car, and he drove south on Drexel from my view. I waited there a few minutes with the informant,—that is, I waited with Harvey Jackson a few minutes. We then left the resident, entered his car and drove back to 57th and the Outer Drive where we had met earlier with Agents DeFauw and Kirstann, and at that time I gave that blue

wrapper package that White had put on the table to Agent DeFauw.

* * * * *

[28] Q. Calling your attention specifically to 9:00 a.m. [29] in the morning of December 10, 1965, did you have occasion to go to 57th and Lake Shore Drive?

A. Yes, I did.

Q. Who was there when you got there, if anyone, or did you go there—Strike that.

How did you go there?

A. I drove to that area with Agents Robert J. DeFauw and William C. Kerstann.

Q. What happened when you got there?

A. We met with Harvey Jackson.

Q. After you met with Harvey Jackson, what happened?

A. After we met with Harvey Jackson, we had a conversation after which we drove in Agent DeFauw's automobile—that is, Harvey Jackson, William C. Kerstann and myself, along with Robert J. DeFauw, who was driving the automobile, we drove to 65th Street and the Outer Drive where a public outside telephone was located.

Q. What happened at that location, Agent Jackson?

A. At that location Harvey Jackson made a telephone [30] call which was monitored by me with his permission.

Q. When you say "monitored" would you tell the ladies and gentlemen of the jury what you mean?

A. I listened in on the conversation. I listened with Harvey Jackson from the receiver to a conversation that he had with someone.

Q. Did you see the number that was dialed?

A. Yes, I did.

Q. Will you tell the ladies and gentlemen what number was dialed?

A. Harvey Jackson dialed the telephone number AB4-1130.

Q. Did you on a subsequent occasion check that number and see who the listing was for?

A. Yes, I did.

Q. Do you know who the listing was for at that time?

A. Yes, I do.

Q. Who was it?

A. At that time that telephone number was listed to Francis Thompson, 7500 South Wentworth Avenue, Chicago, Illinois.

[31] Q. Do you know where the defendant James White lived at that time?

A. 7500 South Wentworth.

Q. Have you ever heard the defendant James White's voice before December 10, 1965?

A. Yes, I had.

Q. Have you heard it subsequent to December 10, 1965?

A. Yes, sir.

Q. You say you monitored a phone call on December 10, 1965, around 9:15 or so, is that correct?

A. Yes, sir, that is correct.

Q. Did you recognize the voice on the telephone as you listened in?

Mr. Eskridge: Objection.

The Court: I will overrule the objection.

By the Witness:

A. Yes, I did.

By Mr. McDonnell:

Q. Whose voice was it?

A. It was the voice of——

[32] Mr. Eskridge: Objection, your Honor. The monitoring device is a device which interrupts conversation between two people, and in this case the defendant is identified as being the person on the phone and this is in violation of the law both of Illinois and federal law, and the Federal Constitution.

The Court: I will overrule your objection.

By Mr. McDonnell:

Q. Did you recognize the voice that spoke to you over the phone and to Harvey Jackson over the phone?

A. Yes, I did.

Q. Whose voice was it?

A. It was the voice of the defendant James White.

Q. As best you can recall, please relate the conversation

between Harvey Jackson and the defendant James White.

Mr. Eskridge: I make the same objection, your Honor.

The Court: I will make the same ruling. I overrule your objection.

By the Witness:

A. James White answered the telephone.

[33] Harvey Jackson said, "This is Harvey."

James White said, "This is Jimmy. What is it?"

He said, "I'm leaving the house in a little while and you better come over and get the money now."

At the time James White said, "I'll be over in about an hour to pick up the money."

Harvey Jackson said, "I'll be waiting."

Q. How long did this conversation last, if you remember?

A. Three seconds, three or four seconds.

Q. After that conversation, what, if anything happened?

A. After that conversation we went back to 57th and the Outer Drive where Harvey Jackson was searched for money and narcotics by Agent Robert J. DeFauw and Agent Kerstann in my presence. He didn't find anything.

He then placed the radio kel set transmitter underneath his outer garments. We tested it to see if it was working, after which Harvey Jackson and I entered——

[34] Q. Excuse me. Did you say you tested to see if it was working?

A. Yes.

Q. Was it working?

A. It was working, yes.

Q. All right. What happened after this?

A. After that Harvey Jackson and I entered his automobile and drove to his residence at 6141 South Drexel.

Q. Is that the same place that you previously testified about?

A. It is.

Q. Tell us what happened when you arrived there, sir?

A. We arrived there, I had a cup of coffee, we talked, we had conversation until approximately 10:30 or 10:45.

Q. What happened at 10:45, if you remember?

A. At approximately 10:45 a.m., from the window I observed James White to drive up in a 1964 yellow convertible Thunderbird.

Q. Did you see him after that?

A. Yes. He left the car and started for the gate to the [35] yard of the residence. Then I went back to this kitchen closet that I had concealed myself in previously and concealed myself again.

Q. Is that the same closet you spoke of earlier?

A. It is the same closet, yes.

Q. What did you do with the doors of that closet?

A. I cracked the doors to where I could observe part of the kitchen and the table immediately in front.

Q. When you say cracked the doors, can you fully explain what you mean by that?

A. I opened them part way where I could see without being seen.

Q. Is that a big closet?

A. Yes, it's a pretty good-sized closet. The width is about the size of the doors in back and it goes back, oh, I guess about eight feet from where the doors open, it goes back about eight feet.

Q. Anything in there?

A. Yes, there was some junk in there.

[36] Q. Calling your attention to after you went in this closet, what, if anything, happened that you remember?

A. James White came to the door, knocked on the door. Harvey Jackson let him in. They came in and Harvey Jackson told him to come in the kitchen and take a seat. He entered the kitchen and they took seats at the kitchen table.

Q. Both of them sat down, sir?

A. Yes, they did.

Q. What happened then?

A. After they sat down at the table, Harvey Jackson—James White asked Harvey Jackson if he had the money.

Harvey Jackson said, "Yes."

Harvey Jackson took from his pocket the $1,000 that Agent DeFauw had given him, counted the money out on the table, handed it to James White who in turn counted the money himself and put the money in his pocket.

Q. You saw this, is that correct?

A. Yes, I did.

Q. What happened after this had transpired?

A. After he counted the money, James White told Harvey Jackson—no, Harvey Jackson asked James White when he [37] —he says, "When am I going to get some more stuff?"

James White said, "Saturday night, December 14th." He said, "If there's—" as I recall, he said, "Saturday night, December 14th." I think he said, "If there's any change in plans, I'll give you a call, but if I call you, then you'll know that I mean the original designated time" which was 6:00 p.m.

Q. Did he have occasion to leave then?

A. Yes, he did.

Q. After he left, what happened?

A. After James White left, Harvey Jackson and I waited a few minutes until White was out of view, went to his car and entered, drove back to 57th and the Outer Drive and met with Agents DeFauw and Kerstann.

Q. Were they there when you got there?

A. No, they were not.

Q. How soon after you got there did they arrive?

A. I think about 15 or 20 minutes.

A. What happened when they arrived?

[38] A. When they arrived, Agent DeFauw—we had a conversation, Agent DeFauw, Kerstann and I with the informant? Agent DeFauw then took the radio kel transmitter set from Harvey Jackson's person—that is, he took it from underneath his outer garments, and then we, as I recall, drove to the office of the Bureau of Narcotics.

Q. Now, Agent Jackson, on the occasion that you saw James White the defendant transfer the narcotics or the blue package to the informer Harvey Jackson, did you see Harvey Jackson deliver to the defendant a narcotic written order transfer issued in blank by the Secretary of the Treasury or his delegate?

Mr. Eskridge: Objection.

The Court: Why?

Mr. Eskridge: The question is leading.

The Court: I don't how he can ask it in any other way. I will overrule the objection.

By the Witness:

A. No, I did not.

By Mr. McDonnell:

Q. Did you or anyone in your presence deliver to Harvey [39] Jackson such a blank to give to the defendant James White?

A. No.

Q. Agent Jackson, calling your attention to Saturday, December 11, 1965, at approximately 5:00 p.m., do you know where you were then?

A. Yes, I do.

Q. Where were you, if you remember?

A. As I recall, I was at 59th and Stony Island.

Q. Were you there alone?

A. No, I was not.

Q. Who was there with you?

A. Agents DeFauw and Kerstann.

Q. Anybody else?

A. There were other agents of the office of the Bureau of Narcotics, yes.

Q. Was there anybody else there besides agents of the Bureau of Narcotics and yourself?

A. Harvey Jackson.

Q. What happened at that location at that time?

A. At that location we had a conversation with Harvey Jackson. Agent DeFauw searched him for money and narcotics. He didn't have either.

[40] He then strapped the radio kel transmitter set on his person and we tested to see if it was in working order.

Q. Was it in working order?

A. It was.

Q. What happened then?

A. After that Harvey Jackson and I entered his car and drove to Lake and Wells Street where Harvey Jackson parked on Wells Street between Lake and Wacker on the east side of the street across from a parking establishment.

Q. Calling your attention specifically to about 6:00 p.m. on December 11, 1965, did you have occasion to see the defendant Jimmy—excuse me, James White?

A. Yes, I did.

Q. Tell the ladies and gentlemen of the jury just what happened, please?

A. At about 6:00 p.m. the defendant White came from the west on Lake Street, made a turn, parked in front of a

restaurant on the southwest corner. At that time I signaled for Harvey Jackson to leave his car.

[41] Q. What happened then?

A. Harvey Jackson left his car, started walking about half a block—well, he walked about half a block, but before he could get to the car, James White drove off.

Q. What did you do then?

A. After James White drove off, I went and met with Harvey Jackson. We sat there for a few minutes.

I got out of the car, crossed the street to the parking area, and we waited there for about an hour.

Q. Now calling your attention to approximately 7:00 or 7:15 p.m., did you have occasion to see other members of the Federal Bureau of Narcotics?

A. Yes, I did.

Q. Who did you see?

A. Agents Kerstann, DeFauw, and there were other agents I don't remember.

Q. What happened when you saw them?

A. We had a conversation with Harvey Jackson.

Q. What happened after that conversation, if you remember?

[42] A. After the conversation with Harvey Jackson, we went to the telephone.

Q. Who do you mean by "we"?

A. Agent DeFauw, Harvey Jackson, Kerstann and myself.

Q. What happened at the telephone? Where was the telephone, by the way?

A. As I recall, the telephone was in this drug—I am sorry, it was in the restaurant on the southwest corner that the defendant had parked in front of.

Q. What happened at that location?

A. At that location Harvey Jackson made a telephone call to the defendant's residence.

Q. What did you do?

A. I monitored it.

Mr. Eskridge: Objection. The witness stated that Harvey Jackson made a telephone call to the defendant's residence. There is no way or nothing certainly in this evidence of how this witness knew or that this witness——

The Court: If he didn't do anything, he may state he didn't.

[43] You may answer over objection.

By Mr. McDonnell:

Q. Agent Jackson, you were present when a phone call was made, is that correct, sir?

A. Yes, I was.

Q. Who dialed the number?

A. Harvey Jackson.

Q. What number did you see him dial?

A. AB4-1130.

Q. Is that the same number that was dialed before at 67th and the Outer Drive, sir?

A. That is correct.

Q. Did you hear the voice at the other end of that phone?

A. Yes, I did.

Q. Did you hear the voice at the other end of the phone on December 11, 1965?

A. Yes, I did.

Mr. Eskridge: Pardon me. Do I understand that there was a radio device or some kind of an electronic device attached to a telephone?

The Court: Are you asking me? I am not the witness. [44] If you have any objection, you make your objection. I can't answer your question. I am not the judge of the facts here. I have told the jury that the jury will judge the facts from the evidence. You will be afforded an opportunity to ask questions on cross examination, Mr. Eskridge.

Mr. McDonnell: May I proceed, your Honor?

The Court: You certainly may.

By Mr. McDonnell:

Q. What specifically did you do after he dialed that number?

A. I listened in on the receiver—that is, I put my head close to his where we both could listen in on the receiver and could hear the voice.

Q. Did you recognize the voice on the other end of the receiver?

A. Yes, I did.

Q. Whose voice was it?

A. The defendant James White's.

[45] Q. What was said between Harvey Jackson and the defendant James White?

A. At that time James White answered the telephone and Harvey Jackson said, "This is Harvey."

James White said, "Yes."

Harvey Jackson said, "What happened? I waited down here about two hours on you and I didn't get a chance to meet you."

He said, "Well, I was there and I waited about a few minutes, and I left. You know I don't like to linger around when I got something on me."

Q. Was that the end of the conversation?

A. Harvey Jackson asked James White when he was going to get some more heroin, he said "stuff."

James White said, "Well—"

As I recall, this was when he said, "December 14th."

Q. Now in the business that you are in, Agent Jackson, is the language of the street can you tell the ladies and gentlemen of the jury what "stuff" means?

A. Heroin.

[46] Q. Now you say that the defendant James White said he could get some more stuff on the 14th, is that correct, sir?

A. That is correct.

Q. What happened after he said that?

A. After he said that, he told Harvey Jackson that he would call him.

Q. All right. And then what did you do?

A. That was the extent of the conversation, as I recall. Harvey Jackson hung up the receiver and we left. We left the restaurant and went back to his car. I went with him, Agent DeFauw and Kerstann back to their car and we drove back to the office of the Bureau of Narcotics.

Q. What happened at the Bureau of Narcotics, if you remember?

A. We had conversations with Harvey Jackson.

Q. Do you specifically remember if Harvey Jackson had the kel set at this time?

A. The kel set was taken from his person at that time.

Q. Were you on duty as a Federal Bureau of Narcotic Agent on December 14, 1965?

[47] A. As I recall, I was on another investigation or I might have been on leave. I think I was on another investigation.

Q. Calling your attention to December 16th, were you still on leave or on an investigation?

A. I think I was on leave on the 16th.

Q. Calling your attention to December 28, 1965, at approximately 3:30 p.m., did you have occasion to be in the vicinity of 67th and Stony Island in the City of Chicago?

A. Yes, I did.

Q. Were you alone or were you with someone?

A. I was with Agents Robert J. DeFauw and Raymond L. Vinsik.

Q. What happened there, if you remember?

A. We met with Harvey Jackson.

Q. What occurred when Harvey Jackson came?

A. When Harvey Jackson came, he was searched by Agent DeFauw for money or narcotics, his person was searched. Then his car was searched. I searched his car for money or narcotics and I found neither. Agent Defauw then placed the radio kel transmitter set on his person.

[48] Q. What happened after the kel set was placed on his person?

A. Agent DeFauw gave Harvey Jackson $1200 in official advance funds—$1250, I am sorry.

Q. At that time was the kel set in good working order?

A. It was.

Q. Now after the $1250 was given to the informant Harvey Jackson, what did you do?

A. Harvey Jackson and I entered his car and drove to his residence at 6141 South Drexel.

Q. Calling your attention to approximately 6:00 p.m., what, if anything, happened? That is 6:00 p.m. on December 28, 1965.

A. Harvey Jackson and I were sitting in the front room facing the window. About 6:00 p.m. I observed the defendant White drive up in this black 1962 Cadillac and park his car. He then started for the gateway to the yard of the residence.

Q. What did you do then?

A. I went to this closet and concealed myself.

[49] Q. Was this closet the same closet you have spoken of on two prior occasions?

A. It is.

Q. What happened after you got in the closet?

A. After I got in the closet, there was a few minutes and then there was a knock at the door. Harvey Jackson opened the door and he and James White walked into the kitchen.

Q. Was there a conversation between James White and Harvey Jackson?

A. Yes, there was.

Q. Did you overhear it?

A. Yes, I did.

Q. Will you tell the ladies and gentlemen of the jury and his Honor just exactly what you remember you overheard?

A. Harvey Jackson greeted James White, told him that he had been expecting him and that he was waiting on him.

At that time I think James White said, "It's getting colder. It's a little colder than I thought it would be."

They then entered, they then took seats at the table, and [50] White asked Harvey Jackson if he had the money.

Harvey Jackson said, "Yes, I have $1250."

James White said, "All of it?"

He said, "Yes."

Harvey Jackson counted out the money on the table. After he counted the money out, he handed it to James White who then counted the money. James White put the money in his pocket. At that time Harvey Jackson asked—James White said, "I can't stay around, I got to leave. I got a couple more stops to make."

Harvey Jackson asked James White, he said, "Are you going by Harry B's?"

He said, "No, somebody you don't know."

Q. Was there any further conversation?

A. As I recall, there was not.

Oh, yes, there was some more conversation. James White told Harvey Jackson that he would in the future have to get the money that he was getting from him for the narcotics, he would have to receive it faster because, he said, "The Dago wants the money and I can't be waiting around for it. I got to give the guy his money."

[51] Q. All right. Was that the end of the conversation then?

A. Yes, it was.

Q. What happened after that conversation ended?

A. After that conversation, James White told Harvey

Jackson that he would see him later. He left. I waited around a few minutes and I came out of the closet.

Q. What did you do then?

A. I walked to the door, saw James White get in his car, and he drove off. Harvey Jackson and I waited a few minutes and then we drove back to 67th and Stony Island where we met with Agents DeFauw and——

Q. I am sorry, I didn't hear.

A. We went to 67th and Stony and waited for Agents Vinsik and DeFauw. I don't think they showed up and we drove to the office of the Bureau of Narcotics.

Q. Calling your attention to after the defendant James White left the residence of Harvey Jackson at 641 South Drexel, did you have occasion to search the informant?

[52] A. Yes, I did. I searched his person for money and narcotics. He didn't have either. And I took the kel set from his person.

Q. After you got to the Bureau of Narcotics—after you returned to the Bureau of Narcotics, what, if anything, occurred at that location?

A. We waited there for Agent DeFauw and Agent Vinsik who did come a little time shortly after. After they arrived with other agents of the Federal Bureau of Narcotics, we had a conversation with Harvey Jackson.

Q. You had a conversation?

A. Yes.

Q. Now calling your attention again to your being in the residence of Harvey Jackson at 6141 South Drexel, did you see the defendant James White at that time, or did you see the informant Harvey Jackson at that time deliver to the defendant James White a written narcotic transfer order issued in blank for that purpose by the Secretary of the Treasury or his delegate?

A. No, sir, I did not.

Q. Did you or anyone in your presence deliver to Harvey

[53] Jackson such an order to deliver to James White.

A. No.

Q. Calling your attention to January 5, 1966, Agent Jackson, specifically calling your attention to around 5:00 p.m., do you know where you were at that time on that date?

A. Yes, I was at 67th and Stony Island.

Q. Were you there alone or were you with someone?

A. I was with other agents.

Q. Was there anybody else there?

A. Harvey Jackson, yes.

Q. What happened at that location?

A. Agents Robert J. DeFauw, William C. Kerstann, Harvey Jackson and myself had conversations.

Q. After the conversations were over, what did you see?

A. After the conversations, Agent DeFauw searched Harvey Jackson's person for money and narcotics. He then placed the radio kel transmitter set underneath his outer garments. I searched Harvey Jackson's car for money or narcotics. I found neither. We had further conversations [54] and after that Agent Robert DeFauw gave Harvey Jackson $1300 official advance funds.

Q. Did you have occasion to do something after Harvey Jackson received the official advance funds? Did you have occasion to go somewhere or do something after Harvey Jackson received the $1300?

A. Yes. Harvey Jackson and I entered his car and drove to his residence at 6141 Drexel.

Q. Calling your attention specifically to his residence, do you remember what time you arrived there?

A. About 5:30.

Q. When you got to his residence, what did you do?

A. We waited there until about 6:00 p.m., as I recall.

Q. Calling your attention specifically to between the hours of 6:00 and 6:20 p.m., what, if anything, occurred that you remember?

A. At that time James White drove up in this same black 1962 convertible Cadillac. It is a white top with a black bottom. He parked the car——

[55] Q. Excuse me. Is that the same car you have been referring to previously?

A. Yes, but I had not mentioned the white top.

He parked the car, left the car and started—that is, he started toward the gate to the entrance to the yard of the residence.

Q. What did you do then?

A. I went to this same closet and concealed myself after he had entered the date.

Q. What happened then?

A. After I entered the closet, I heard a knock on the door. Then I heard Harvey Jackson invite the defendant inside

the house. Inside the house Harvey Jackson told James White to come into the kitchen and have a seat. They entered the kitchen, took seats at the table, and at that time James White asked Harvey Jackson if he had the other money. Harvey Jackson said, "Yes, I got $1300." He counted out $1300 that he took from his pocket, counted the money out, put it on the table. James White picked the money up, he counted it, and told Harvey Jackson that [56] he had counted it too fast. After James White counted the money, he told Harvey Jackson that he now owed him $950 and that he wanted that as soon as possible. Harvey Jackson said, "When do you want it?"

James White said, "Come by the restaurant and I'll get it."

Q. Was there any further conversation that you remember, sir?

A. Yes, there was. Harvey Jackson asked James White when could he expect more heroin?

James White said, "Probably after I get back from out of town." He said, "I'm leaving town, I won't be back until after the 8th," and he says "You'll need some because there's going to be a panic."

Harvey Jackson said, "There is?"

He said, "Yes." He said, "You better hurry up and get it to me then."

As I recall, he then told Harvey Jackson that he had some more people to see, he mentioned that he had to see Harry B. and his brother, and then there were a couple of other people he had to see, and he then told Harvey Jackson [57] to come by the club with the rest of the money and they would talk about getting the stuff.

Q. Was this the end of the conversation?

A. Yes, that was the end of the conversation.

Q. Did you see what happened then?

A. James White left.

Q. What hapened after White left?

A. After White left, Harvey Jackson and I waited a few minutes in his residence. While we were waiting, I took the kel set from his person, put it in my pocket. I searched him. We then drove in his car back to 67th and Stony Island where we met with the agents that we had met with earlier, Agents Kerstann, DeFauw, and there were other

agents from our office, and all of us then drove to the office of the Bureau of Narcotics where we had conversations with Harvey Jackson and the other agents.

• • • • •

[61] Cross-examination.

By Mr. Eskridge:

Q. Mr. Jackson, you spoke of an informant by the name of Harvey Jackson. Now you testified that you last saw him in January of 1966?

A. To the best of my knowledge that's the last time I saw him, yes.

Q. Now have you been to his home since that time?

A. Yes, I have.

Q. Does he still live there?

A. No, he doesn't.

Q. Did you make an effort to find out where he moved to?

A. Yes, our office has made efforts to locate him.

Q. Did you make an effort?

A. Yes, I have made efforts.

Q. What did you do in the efforts that you made to locate this Harvey Jackson?

[62] A. I talked with his wife. She stated she didn't know where he was. I visited a couple of places that she said he frequented, a couple of taverns not too far from there. I checked with the Light Company. We checked with Missing Persons of the Police Department. Also the FBI made endeavors to locate Jackson.

Q. How long ago was it that you went to his home?

A. Around July or August.

Q. And you talked to his wife?

A. Yes.

Q. What kind of work did he do?

Mr. McDonnell: Objection, your Honor.

The Court: I sustain the objection.

By Mr. Eskridge:

Q. Did you know where he worked?

Mr. McDonnell: Objection.

The Court: I will sustain the objection.

By Mr. Eskridge:

Q. Besides going to his home and talking to his wife, did you go anywhere else to look for him besides the taverns?
[63] A. We checked with Missing Persons at the Police Department.

Q. Did you go any other place?

A. No.

Q. Just the taverns and his home?

A. The taverns, his home and the FBI made some endeavors, and we checked with Missing Persons of the Police Department.

* * * * *

[64] Q. When you got to Harvey Jackson's home, do I understand that Harvey Jackson permitted you to enter his home?

A. I went with him. He opened the door and I went in with him.

Q. When you went in with him, did he give you permission to move into his closet, or did you ask him?
[65] A. Yes, he had given me permission. He had mentioned that there was a closet and that he usually did business with James White in the kitchen.

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[107] ROBERT J. DEFAUW, a witness called by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McDonnell:

* * * * *

Q. Now calling your attention, Agent DeFauw, to Decem-
[108] ber 9, 1965, around 7:00 p.m. that evening, do you know where you were?

A. Yes. I was at 57th and the Lake Shore Drive, Chicago, Illinois.

Q. Were you there alone?

A. No. I was in the company of Agent Jackson and Agent Kerstann.

Q. Did you have occasion to meet someone there?

A. Yes. I met Harvey Jackson at that location.

Q. After Harvey Jackson came, what happened, if anything?

A. We had a conversation.

[109] Q. Pursuant to that conversation did you do anything?

A. Yes. I searched Harvey Jackson, found neither narcotics nor money on his person. Subsequent to the search I placed a kel set transmitter under Jackson's outer clothing.

Q. What is a kel set transmitter?

A. It is a radio transmitter which is capable of transmitting voices and sounds which we are able to receive over our car radio.

Q. How far can these voices and sounds be transmitted?

A. That depends a lot on the area in which you are in in the city. We have received communication up to a mile.

Q. Calling your attention to this evening around 7:15 p.m., did you have occasion after you strapped the kel set transmitter onto Harvey Jackson, did you have occasion to do something?

A. I had Jackson speak at various ranges from our vehicle and I was able to hear his voice over our receiver.

Q. Was the Kel set in good working operation?

[110] A. Yes, it was.

Q. What happened then, Agent DeFauw?

A. Agent Jackson and Harvey Jackson then entered Harvey Jackson's vehicle and I followed them to 6141 South Drexel, the residence of Harvey Jackson.

Q. On the way there did you have occasion to do anything concerning the kel set transmitter?

A. Yes. Agent Jackson spoke to Harvey Jackson. I blinked my headlights to show them I was receiving their transmissions.

Q. After you got to 6141 South Drexel—

By the way—Strike that, Miss Reporter.

What is in the vicinity of 6141 South Drexel?

A. Directly across the street from the informant's residence is a convalescent home.

Q. How big is that?

A. It is quite a large building, it almost takes up the entire block.

Q. Now after you arrived at 6141 South Drexel, what did you do?

[111] A. I instituted surveillance of 6141 South Drexel, the residence of Harvey Jackson.

Q. Were you there alone or were you there with someone?

A. I was with Agent Kerstann.

Q. Calling your attention to around 8:00 p.m., did you have occasion to see someone that you know?

A. Yes, I did.

Q. Who did you see?

A. I observed James A. White park a 1962 Cadillac convertible in front of 6141 South Drexel and enter that address.

Q. Could you describe the Cadillac convertible?

A. It is a black convertible with a white top and it has 1965 Illinois license No. LA 2621.

Q. Do you see the same person in court today that you saw on that occasion?

A. Yes, sir, I do.

Q. Would you point him out, please?

A. He is seated behind counsel wearing a brownish-colored suit.

Q. Is that the man that you know as James A. White?

[112] A. Yes, it is.

Mr. McDonnell: Would the record reflect the fact that the agent has pointed out the defendant James A. White?

The Court: The record may indicate that this witness has identified the defendant White in open court.

By Mr. McDonnell:

Q. Now after Mr. White pulled up in his Cadillac, what, if anything, happened?

A. I observed him park the vehicle in front of 6141 South Drexel and enter that residence.

Q. Did you have occasion to do anything then?

A. I heard Harvey Jackson say, "Hello, Jimmy. Come on in and sit in the kitchen away from the children."

* * * * *

[115] Q. I now show you what has been marked as Government's Exhibit Z and ask you if that refreshes your recollection.

The Court: That is Z for identification.

Mr. McDonnell: Yes, sir.

By the Witness:

A. Yes, it does. This is a memorandum report which I prepared on December 14, 1965, and my signature appears at the bottom of the first page.

By Mr. McDonnell:

Q. Does that refresh your recollection?

A. Yes, it does.

Q. Would you tell us now what the conversation was between the defendant James A. White and the informer Harvey Jackson without reading therefrom?

Mr. Eskridge: Objection. He is reading from something——

The Court: He hasn't started to read yet. The question was put to him with a direction to the witness not to read. [116] He may answer over the objection.

By the Witness:

A. Generally the informant stated, "Hello, Jimmy. Come on in. Sit in the kitchen away from the children."

Then I heard White's voice stated, "I've got the package for you" and I heard Harvey Jackson state——

Mr. Eskridge: I am sorry, your Honor, I still can't hear him.

The Court: Try shouting at Mr. Eskridge. The lawyer can't hear you.

The Witness: Can you hear me now, Mr. Eskridge?

I then heard the informant say, "How much is in the package?"

I heard White's voice state, "There's a pretty good ounce in there."

Then I heard the informant state, "You know I don't have the money yet."

And I heard White's voice state, "I'll be back tomorrow morning to pick it up."

And the informant said, "All right. I'll see you then." [117] I heard the defendant White say, "I've a couple of stops to make."

And that was the end of the conversation as I remember it.

By Mr. McDonnell:

Q. Subsequent to the conversation, what, if anything, did you see?

A. I saw James White leave 6141 South Drexel and enter his vehicle.

Q. What, if anything, did you do then?

A. I followed White to 7500 South Wentworth Street where I observed him park his car and enter a dwelling located at that address.

Q. Would you describe that dwelling, if you can?

A. It is a brick, one-family home. I would say it is a fairly nice-looking home, it is quite expensive, I would say.

Q. Now at that location what did you do?

A. I continued surveillance of White's residence for approximately 45 minutes and then the surveillance was discontinued.

Q. What did you do then?

[118] A. I returned to 57th and Lake Shore Drive where I met with Agent Jackson and Harvey Jackson.

Q. What occurred at that location?

A. Agent Jackson handed me a blue paper package which I examined.

Q. Will you tell the ladies and gentlemen of the jury what your examination consisted of?

A. I found the blue paper to contain a piece of aluminum foil which further contained a plastic bag which contained a quantity of white powder.

Q. Would you tell the ladies and gentlemen what you did then?

A. I performed a field test with a marquis reagent on a small portion of the white powder contained in the plastic bag in the presence of Agent Jackson and Agent Kerstann, and I observed a positive reaction.

Q. Tell the ladies and gentlemen what a positive reaction on a field test is.

A. A marquis is an acetic solution, and if one places an opiate into this solution, the solution turns a purplish color.

Q. What happened on that occasion?

[119] A. The solution turned a purplish color.

Q. What did you do then?

A. I then retained custody of the evidence. Then I searched Harvey Jackson and I found neither narcotics nor money on his person. Subsequent to the search I removed the kel set transmitter from Jackson.

Q. What happened after you removed the kel set transmitter?

A. Agent Jackson, Agent Kerstann and Harvey Jackson and I then returned to the offices of the Bureau of Narcotics.

* * * * *

[121] Q. After the kel set was placed on Harvey Jackson, did you have occasion to do something concerning it?

A. Yes. I furnished Harvey Jackson with $1,000 of previously-recorded official advance funds.

Q. With regard to the kel set, did you have occasion to do something concerning the kel set, sir?

A. We tested the kel set transmitter and found it to be in working order.

Q. Subsequent to your giving Harvey Jackson the $1,000—

Incidentally, where did you get the $1,000?

A. From the office of the Bureau of Narcotics at Chicago, Illinois.

Q. After you gave Harvey Jackson the $1,000, what, if anything, did you do?

A. Agent Jackson then entered Harvey Jackson's vehicle and they drove to 6141 South Drexel. I followed them to that location.

[122] Q. Calling your attention to approximately 10:45 a.m. on December 10, 1965 did you have occasion to see someone that you know?

A. Yes, sir, I saw James A. White.

Q. Is that the defendant?

A. The defendant James A. White park a 1964 Thunderbird convertible in front of 6141 South Drexel. The thunderbird convertible at that time had a 1965 Illinois license plate on it FG 8688.

Q. Are you sure of the license number of that automobile?

A. I may be mistaken.

Q. Have you reviewed your file on the license number at all, Agent DeFauw?

A. Yes, I have reviewed my file, but I may be mistaken on the plate number.

Q. Did you write down the license number?

A. Yes.

Q. Subsequent to that did you have occasion to find out who the license plate on that automobile was listed as belonging to?

A. The vehicle was registered to a Frances White at 7500 South Wentworth.

Q. Do you know who Frances White is, sir?

[123] A. I believe she is the wife of the defendant James A. White.

Q. Calling your attention to that date, December 10, 1965, at approximately 10:45 a.m., did you have occasion to see where the defendant James A. White proceeded after he left the automobile?

A. I observed the defendant White enter 6141 South Drexel.

Q. Whose home is that, if you know?

A. The residence of Harvey Jackson.

Q. What occurred after that?

A. After that I heard a conversation between Harvey Jackson and James White.

Q. Can you state fully from your memory with exactness that conversation?

A. I can state merely——

Mr. Eskridge: Objection. This was a conversation over a radio and the objection was made before, your Honor, that the radio communication was in violation of the statute.

The Court: I overrule the objection.

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[124] • • •

A. No, I cannot.

• • • • •

Q. Is there anything that will refresh your recollection?

A. Yes, the report which covers that particular event.

Q. I now show you what has previously been marked as Government's Exhibit Z for identification. I ask you to look at it and I ask you if that will refresh your recollection?

A. Yes, it will.

Q. Are you finished?

A. Yes, I am.

Q. Would you state now the conversation that you heard on December 10, 1965, at 6141 South Drexel?

A. As I observed James A. White enter 6141 South Drexel, I heard his voice say, "Hi. Have you got the money?"

And I heard Harvey Jackson say, "Yes, I've got the grand."

[125] Q. Could you identify the voices?

A. Yes.

Q. Continue, please.

A. I then heard Harvey Jackson mumbling some numbers. Then I heard Harvey Jackson say, "Here, you count it to make sure it's right."

I then heard the defendant White's voice mumbling some numbers and I heard him say, "Yes, it's all here."

I then heard White say, "I'll have another one for you Saturday." He said, "I'd like you to meet me at six o'clock at Lake and Wells Street, but if there's any change, I'll call you on the phone, and if I tell you to meet me at four, that means to meet me at six, because you never know when the telephone is funny."

So the informant agreed to that, and that terminated the conversation to the best of my knowledge..

Q. Subsequent to the termination of this conversation, Agent DeFauw, did you have occasion to see the defendant James White again?

A. Yes, I did.

[126] Q. Where did you see him?

A. I observed him leave Harvey Jackson's residence, enter the Thunderbird convertible, and I followed him back to 7500 South Wentworth Street where I observed him park the car and enter his residence.

Q. Did you stay in that vicinity?

A. For a short period of time.

Q. Did you have occasion to go somewhere else after that?

A. Yes. Agent Kerstann and I then returned to 57th and Lake Shore Drive where I met with Agent Jackson and Harvey Jackson.

Q. What happened at 57th and Lake Shore Drive?

A. We had a conversation.

Q. In pursuance of that conversation, did you have occasion to do anything?

A. Yes, I searched Harvey Jackson and found neither narcotics nor money on his person. I then removed the kel set transmitter from Harvey Jackson.

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[133] Q. Agent DeFauw, calling your attention to December 11, 1965, at approximately 5:00 p.m., do you have any idea where you were at that time on that date?

A. Yes. I met with Harvey Jackson, Agent Jackson and Agent Kerstann at 59th and Stony Island Streets.

Q. What occurred at that location?

A. We had a conversation.

Q. Pursuant to that conversation did you do something?

A. Yes. I searched Harvey Jackson, found neither narcotics nor money on his person, I then placed the kel set transmitter under his outer clothing and tested the transmitter to make sure it was working.

Q. Was it working, sir?

A. Yes, it was.

[134] Q. What happened then?

A. Agent Jackson searched Harvey Jackson's vehicle. Then Agent Jackson and Harvey Jackson drove to the vicinity of Wells and Lake and I followed them to that location.

Q. What happened in that vicinity?

A. I observed Harvey Jackson park his personal vehicle about mid-block between Lake and Wacker Drive on the east side of Wells Street.

Q. And in what position would his car be facing?

A. His vehicle was going north.

Q. What did you do?

A. I instituted surveillance in the vicinity of Lake and Wells Streets.

Q. Calling your attention to approximately 6:00 p.m., did you have occasion on that date to see anyone that you know?

A. Yes. I observed the defendant James A. White park his 1962 black Cadillac convertible bearing license No. LA 2621 on the west side of Wells Street just south of Lake.

Q. Now what position would his car be facing?

[135] A. His car was facing south.

Q. What happened at that time?

A. I observed the defendant White remain at that location for a very short period of time and then he drove off south on Wells Street out of view.

Q. Did you see anybody else in that area that you know?

A. I observed Harvey Jackson walking south on Wells Street to the place where the defendant White had parked his car.

Q. Did they meet?

A. No, they did not.

Q. After the defendant James A. White drove off in his Cadillac, what did you do?

A. I met with Agent Jackson, Harvey Jackson and Agent Kerstann and we had a conference.

Q. Calling your attention to around 7:00 or 7:15 p.m., what, if anything, occurred?

A. We entered a restaurant which is located on the west side of Wells Street south of Lake Street, I believe it is called Pixley Ehlers' restaurant.

Q. What occurred in that restaurant, sir?

[136] A. Agent Jackson and Harvey Jackson went to the public telephone. I observed Harvey Jackson dial telephone number AB 4-1130 and I observed Agent Jackson place his ear close to the receiver while Harvey Jackson spoke.

Q. Could you hear the conversation?

A. No, I could not.

Q. Subsequent to that conversation, did you have occasion to go to Columbus Drive in the City of Chicago?

A. Yes. Subsequent to the conversation, Agent Jackson, Agent Kerstann, Harvey Jackson and I proceeded to Columbus Drive just north of Congress where we had a conference.

Q. What happened there?

A. I searched Harvey Jackson, found neither narcotics nor money on his person, and I then removed the kel set transmitter which I had previously placed on him.

Q. What did you do then?

A. We returned to the offices of the Bureau of Narcotics where we had a conference.

[138] Q. Now calling your attention, Agent DeFauw, to December 14, 1965, and specifically to the hour of 7:00 p.m. that evening, did you have occasion to be in the vicinity of 59th and Stony Island Avenue in the City of Chicago?

A. Yes, I did.

Q. Were you there alone?

A. I was with Agent Kerstann and Harvey Jackson.

Q. What happened at that time and place?

A. I searched Harvey Jackson, found neither money nor narcotics on his person. Agent Kerstann searched Harvey Jackson's vehicle and found neither money nor narcotics in the vehicle.

I then placed the kel set transmitter on Harvey Jackson under his outer clothing, tested the transmitter and found it to be in working order.

Q. What happened after you tested the kel set?

[139] A. I furnished Harvey Jackson with $360 of previously-recorded official advance funds.

Q. What happened then?

A. Harvey Jackson entered his vehicle and I followed him to 7500 South Wentworth.

Q. What did you see at that location, if anything?

A. I observed him park his car and enter the residence at 7500 South Wentworth.

Q. Do you know who lives there? Strike that.

Did you know who lived there on December 14, 1965?

A. Yes, I did.

Q. Who lived there then?

A. James A. White.

Q. After Harvey Jackson entered the residence at 7500 South Wentworth, did you have occasion to do something or hear something?

A. Yes. I received voices over the radio in my vehicle.

Q. Did you recognize any of the voices that you heard?

A. Yes, I did.

[140] Q. Whose voices were they?

A. The voices of the defendant James A. White and Harvey Jackson.

Q. Can you recall specifically what the conversation between Harvey Jackson and the defendant James White was on December 14, 1965, at 7500 South Wentworth Avenue?

A. No, I cannot.

Q. Is there anything that will refresh your recollection?

A. Yes, the report governing the event which took place on that date.

Mr. McDonnell: Mark this as Government's Exhibit Y for identification.

• • • • •

By Mr. McDonnell:

Q. I now show you what has been marked as Government's Exhibit Y for identification and I ask you if this is the report to which you testified?

A. Yes, this is the report which states the event which took place on December 14, 1965.

[141] Q. Specifically calling your attention to paragraphs 3 and 4, do you recognize those paragraphs?

A. Yes, I do.

Q. Does this refresh your recollection as to the conversation between the defendant Harvey Jackson, the informant, and the defendant James A. White on December 14, 1965, at 7500 South Wentworth Avenue?

A. Yes, it does.

Q. Would you read it, please, and refresh your recollection?

Are you finished, sir?

A. Yes.

Q. Has your memory been refreshed?

A. Yes, it has.

Q. Will you please tell the ladies and gentlemen of the jury the conversation that you overheard between the defendant James A. White and the informant, Harvey Jackson?

A. I heard James A. White state, "Do you have $360?"

I heard Harvey Jackson's voice reply, "Here it is, here's the $360. You count it."

[142] Q. Did you recognize these voices?

A. Yes, I did.

Q. They were the voices of whom?

A. They were the voices of the defendant James A. White and Harvey Jackson.

Q. Please continue, Agent DeFauw.

A. I then heard the defendant White mumble some numbers, and after that I heard him say that he'd give Harvey

Jackson another two ounces on Thursday, December 16, 1965, and he stated he wanted $1250 for two ounces and he wanted the money within a week and a half after he delivered the merchandise.

I also heard the defendant White state that he wanted Harvey Jackson to move the stuff faster and he stated that the Dagoes wanted their money sooner than what they had been getting it.

That's all I recall of the conversation.

Q. Is your memory exhausted as to the conversation now?

A. Yes, it is.

Q. Is there anything that will refresh your memory?

[143] A. Yes, the report.

Q. I again show you the report to which you referred, Government's Exhibit Y for identification, and I ask you to refresh your recollection.

Is your recollection refreshed?

A. Yes, it is.

Q. Would you please state the rest of the conversation?

A. The informant then inquired as to the quality of the stuff which he was to receive and I heard White reply that "The stuff is so good that after you cut it twice, it'll jump out of your man's hand on the street."

Q. What happened then?

A. I then heard the defendant White instruct Harvey Jackson that he should meet him on Thursday, December 16th, at 6:00 p.m. sharp in front of Hyman's Men's Clothing Store, which is located on the east side of Clark Street just south of Wacker Drive.

Q. Was that the extent of the conversation that you remember now?

[144] A. He instructed the informant not to be late like he was the previous Saturday.

Q. What happened then?

A. I then observed Harvey Jackson leave 7500 South Wentworth and enter his vehicle.

Q. Calling your attention to the vicinity of 76th and Wentworth on December 14, 1965, did you have occasion to see somebody that you knew?

A. Yes, I did.

Q. Who did you see?

A. I was with Agent Kerstann and I saw Harvey Jackson at that location.

Q. What happened at that location?

A. We had a conference.

Q. What happened after the conference?

A. I searched the informant and found neither money nor narcotics on his person. I then removed the kel set transmitter from the informant's person.

Q. What did you do then?

A. Agent Kerstann, Harvey Jackson and I then returned to the offices of the Bureau of Narcotics where we had a conference.

[145] Q. Calling your attention to approximately 5:30 p.m. on December 16, 1965, did you have occasion to be in the vicinity of 59th and Stony Island?

A. Yes, I was in that vicinity.

Q. Were you alone?

A. I was with Agent Kerstann.

Q. Did you have occasion to see anybody that you knew?

A. I spoke with Harvey Jackson also at that location.

Q. What happened after you spoke with Harvey Jackson?

A. I searched Harvey Jackson, found neither money nor narcotics on his person. I then placed the kel set transmitter on Harvey Jackson under his outer clothing. I tested the transmitter to make sure that it was in working order, and it was, and I observed Agent Kerstann search Harvey Jackson's vehicle, and he found neither narcotics nor money in the vehicle.

Q. Afetr the search of Harvey Jackson and Harvey Jackson's vehicle, did you have occasion to go somewhere at that time?

A. Yes, I did.

Q. Where did you go?

[146] A. I followed Harvey Jackson as he drove to a parking lot which is located on the southeast corner of Clark and Wacker Drive.

Q. What happened then at that location?

A. He parked his vehicle in that parking lot and then walked to the front of the Hyman's Men's Clothing Store which is located approximately mid-block between Wacker Drive and Lake Street on the east side of Clark Street.

Q. Calling your attention to approximately 6:00 p.m. that evening, did you have occasion to see anybody that you knew?

A. Yes, I observed James A. White meet with Harvey Jackson in front of Hyman's Men's Clothing Store.

Q. Is that the defendant James A. White?

A. Yes, it is.

Q. What did you see then, if anything?

A. Jackson and the defendant White then walked to Jackson's car, entered the car and drove out of the parking lot.

Q. Did you have occasion to see anybody else in that area that you recognized?

[147] A. Yes, there were many agents in the area at that time.

Q. Now after you saw the defendant James White and the Federal Bureau of Narcotics informant Harvey Jackson drive off in Jackson's car, what did you do?

A. I followed the two subjects in Harvey Jackson's car.

• • • • •

Q. What, if anything, transpired during this following procedure?

A. They drove in the vicinity of the Loop area and the near north side for approximately two hours. During that period of time I heard conversations between the defendant White and Harvey Jackson as they were received over the 2-way radio.

[148] Q. Would you tell the ladies and gentlemen of the jury what that conversation was to the best of your memory?

A. To the best of my memory, the conversation was strictly about stuff and the price of stuff and quality of heroin.

• • • • •

[149] Q. Is your memory exhausted as to the conversation between White and the informant on that evening?

A. Yes, it is.

Q. Is there anything that will refresh your recollection?

A. The report which governs the events which took place on that date.

Q. I now show you what has been previously marked as Government's Exhibit Y for identification and ask you to look at it to see if it will refresh your recollection.

Are you finished with that report?

A. Yes, I am.

Q. Does it refresh your recollection?

A. Yes, it does.

Q. Will you please tell the ladies and gentlemen of the jury and his Honor what the conversation was to the best of your recollection?

A. After having a general conversation about heroin and the quality of heroin, I heard White say, "I have to meet my man right on time because he won't wait."

Q. What happened then?

[150] A. I then observed him stop Harvey Jackson's vehicle at Franklin and Wells Streets where I observed Harvey Jackson leave the car. I observed the defendant James A. White then drive the informant's vehicle. He proceeded to State and Randolph Streets where I observed an unidentified white male enter Harvey Jackson's car with the defendant White.

Q. Did you continue to follow the car?

A. Yes, I did.

Q. What happened then after the male entered the car?

A. They drove west on Randolph Street to approximately half a block west of State Street where I observed the white male leave the car.

A. What did you do then?

A. I followed the white male.

Q. Now calling your attention to 9:00 p.m. that evening, did you have occasion to be on the south side of Chicago? Excuse me. Calling your attention to 9:00 p.m. that evening, did you have occasion to be in the vicinity of Columbus Drive and Congress Streets?

[151] A. Yes, I did.

Q. Were you there alone?

A. I met with Agent Kerstann and Harvey Jackson at that location.

Q. What occurred there?

A. Harvey Jackson handed me a brown paper bag which I examined and found to contain a white paper bag which further contained a plastic bag which contained a quantity of white powder.

Q. What did you do then?

A. I performed a field test on a small portion of the white powder contained in the plastic bag with a marquis reagent in the presence of Agent Kerstann, and I observed a positive reaction indicating the presence of an opiate.

Q. What happened after you performed this field test?

A. I retained custody of the evidence.

Q. After that what occurred, if anything?

A. I then searched Harvey Jackson and found neither narcotics nor money on his person. I then removed the kel set transmitter which I had previously placed on his person and I conferred with the subject.

[152] Q. After that conversation did you have occasion to go somewhere?

A. After my conversation with Harvey Jackson, I observed Agent Kerstann search Harvey Jackson's vehicle, and he found neither narcotics nor money in the vehicle.

Q. What happened after that?

A. Harvey Jackson, Agent Kerstann and I then proceeded to the offices of the Bureau of Narcotics where I tested, weighed and sealed the evidence, placed the evidence in a lock-seal type evidence envelope which I placed in my personal locker for safekeeping pending delivery to the United States chemist.

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[168] Q. Calling your attention to December 28, 1965, at approximately 3:30 p.m., did you have occasion to be in the vicinity of 67th and Stony Island Avenue here in Chicago?

A. Yes, I did.

Q. Were you alone?

A. I was in the company of Agent Vinsik and Agent Jackson and Harvey Jackson.

Q. What happened at that location at that time?

A. We had a conference and subsequent to the conference I searched Harvey Jackson. I found neither money nor narcotics on his person.

[169] I then placed the kel set transmitter beneath his outer clothing, tested the transmitter to make sure it was functioning properly.

Q. Was it functioning properly?

A. Yes, it was.

Q. And what happened then?

A. Agent Jackson and Harvey Jackson then entered Harvey Jackson's vehicle and drove to 6141 South Drexel Street where I observed Harvey Jackson park his car and I observed both Agent Jackson and Harvey Jackson enter Harvey Jackson's residence.

Q. Before Harvey Jackson and Agent Jackson left the vicinity of 67th and Stony Island, did you have occasion to do anything with the person of Harvey Jackson?

A. I furnished Harvey Jackson with $1250 of previously-recorded official advance funds.

Q. Now calling your attention to the location outside of Harvey Jackson's home at 6141 South Drexel, what specifically did you do when you arrived there, sir?

A. I instituted surveillance at that location.

[170] Q. Calling your attention specifically to approximately 6:00 p.m. on the evening of December 28, 1965, did you have occasion to see somebody that you know?

A. Yes, I observed the defendant James A. White park his 1962 black Cadillac convertible in front of Harvey Jackson's residence. He left his vehicle and entered 6141 South Drexel.

Q. After he entered 6141 South Drexel, did you have occasion to hear or do something?

A. Yes, I heard the defendant James A. White and Harvey Jackson. I heard the defendant White ask Harvey Jackson if he had the $1300.

Q. You heard voices, is that correct?

A. Yes.

Q. Did you recognize those voices at that time?

A. Yes, I did.

Q. Whose voices were they?

A. They were the voices of the defendant James A. White and Harvey Jackson.

Q. Did you overhear their conversation?

A. Yes, I did.

Q. Would you please relate to the ladies and gentlemen of the jury and to his Honor, Judge Hoffman, the text of [171] the conversation as best you can?

A. As I recall, the defendant James White asked Jackson if he had the money.

Jackson told him he had the money.

Then I heard the informant mumbling some numbers, and then I heard the defendant White state, "You count too fast, man. Give me the money, I'll count it."

So then I heard the defendant White count $1250.

Q. Was that the extent of the conversation, Agent DeFauw??

A. That is as much as I can recall at this time with any accuracy.

Q. Is your memory exhausted as to that conversation?

A. Yes, it is.

Q. What will refresh your memory?

A. The report which covers the event which took place on that date.

Mr. McDonnell: Mark this as Government's Exhibit X for identification.

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[172] By Mr. McDonnell:

Q. I show you what has been previously marked as Government's Exhibit X for identification and I will ask you to read it to determine whether that will refresh your recollection.

Have you finished?

A. Yes.

Q. Does that refresh your recollection?

A. Yes, it does.

Q. Would you tell his Honor and the ladies and gentlemen of the jury the text of the conversation?

A. After I heard the defendant White count the money, I heard the informant ask when he would be able to obtain some more stuff.

White said, "I'll be able to get some more for you tomorrow." He stated that Jackson would have to get the money faster because the Dago is insisting on fast delivery of the money. So then I heard the defendant White state that he had to leave, he had another stop to make and that terminated the conversation.

[173] Q. After the termination of the conversation, what happened, if you recall?

A. I observed the defendant White leave 6141 South Drexel, enter his Cadillac, and I followed him to the vicinity of 63rd and Cottage Grove Streets where I lost him in traffic.

Q. What did you do then?

A. I returned to 67th and Stony Island where I met with Agent Jackson, Agent Kerstann and Harvey Jackson.

Q. What happened then, if you recall?

A. We had a conference.

Q. What happened after the conference was ended?

A. We returned to the offices of the Bureau of Narcotics where we had another conference.

Q. Calling your attention to December 29, 1965, at approximately 5:00 p.m., did you have occasion to be in the vicinity of Columbus Drive and Congress in the City of Chicago?

A. Yes, I did.

Q. Were you there alone?

A. I was with Agent Kerstann and Harvey Jackson.

[174] Q. What happened at that time at that location?

A. At that location Harvey Jackson and I had a conference. Subsequent to the conference I searched Harvey Jackson and I found neither money nor narcotics on his person.

I then placed the kel set transmitter beneath his outer clothing, tested it to make sure it was functioning properly.

Q. Was it functioning properly?

A. Yes, sir, it was.

Q. What happened after you tested it?

A. I observed Agent Meyer search Harvey Jackson's automobile. He found neither money nor narcotics in it.

Q. What happened after Agent Meyer searched Jackson's auto?

A. Agent Meyer and I followed Harvey Jackson as he drove to the parking lot which is located on the southeast corner of Clark at Wacker Drive.

Q. What happened at that location, if you remember?

[175] A. I observed Agent Connolly in the vicinity. Then Agent Meyer and I proceeded to the vicinity of Randolph and State Streets where we instituted surveillance.

Q. After the informant Harvey Jackson parked his car at the parking lot there on the southeast corner of Clark and Wacker, did you have occasion to see what he did, if anything?

A. He exited his vehicle and entered a bar which I believe is called the 225 Club.

Q. Where is that bar located?

A. It is located just south of the parking lot on the east side of Clark Street.

Q. Calling your attention to approximately 5:45 p.m.,

do you remember where you were at that time on December 29, 1965?

A. Yes, with Agent Meyer I instituted surveillance at the vicinity of Randolph and State Street.

Q. Did you see anybody you know at that location at that time?

A. Yes, there were other agents in the vicinity that I knew.

Q. Did you see anybody that you now know as a man named Sam Minerva?

[176] A. At approximately 6:00 p.m. I observed Sam Minerva standing——

Mr. Eskridge: Objection, your Honor. This is putting testimony in the witness' mouth. I have asked your Honor to admonish counsel about his leading the witness.

The Court: I will do it later. I can't—I do not agree that he is putting anything in the witness' mouth.

Do you feel anything in your mouth, Mr. Witness?

The Witness: No, your Honor.

The Court: The question, Mr. United States Attorney, is suggestive of an answer. Therefore, I will sustain the objection.

By Mr. McDonnell:

Q. Other than Agent Meyer and other agents of the Federal Bureau of Narcotics, did you see anybody else that you know?

A. Yes, I saw Sam Minerva approach the bus stop at the northeast corner of Randolph and State Streets at approximately 6:00 p.m., and I observed him stand in that bus stop.

[177] Q. What else, if anything, did you observe about Mr. Minerva?

A. He was carrying a white shoe box under his left arm.

Q. Calling your attention to a few minutes later, did you see anybody else in that area that you knew?

A. Yes, I observed the defendant James White driving east on Randolph Street from Wabash and he approached the bus stop.

Q. What happened then?

A. I observed the defendant White after he approached State Street, and he continued north on State Street out

of my view. A few minutes later I again observed him driving east on Randolph from Wabash to the bus stop.

Q. Do you remember what the defendant White was driving at this time?

A. A 1958 blue Chevrolet station wagon.

Q. What happened at that time?

A. He pulled into the bus stop and I observed Minerva enter his vehicle.

Q. Did you have occasion to do something then?

[178] A. I observed the defendant White with Minerva drive off, continue east on Randolph for approximately a half a block at which time I observed the defendant Minerva leave the 1958 Chevrolet station wagon and I noted that he was carrying a black leather briefcase under his left arm.

Q. What happened then?

A. I instituted surveillance of Sam Minerva.

Q. Now calling your attention to approximately one hour or an hour and ten minutes later, approximately 7:10 p.m., did you have occasion to be on the south side of the City of Chicago?

A. Yes, I did.

Q. Where were you, if you remember?

A. I was in the vicinity of Stony Island and Midway Plaisance.

Q. What happened at that location?

A. I instituted surveillance of Harvey Jackson's automobile.

Q. What specifically did you do?

A. I followed Harvey Jackson as he drove to the vicinity of 62nd and South Drexel. He parked his car at that location and I was joined there by Agent Meyer.

[179] Q. What happened at that location?

A. Agent Meyer and I approached Harvey Jackson's vehicle and Harvey Jackson handed me a brown paper bag which I examined.

Q. Will you tell the ladies and gentlemen of the jury what you found in the brown paper bag, if anything?

A. Upon examination I found that the brown paper bag contained an inner brown paper bag which contained a white paper bag which further contained a plastic bag which contained a quantity of white power.

Q. What did you do then?

A. I performed a marquis reagent field test on a small portion of the white powder which was contained in the plastic bag.

Q. What was the result of your field test?

A. I observed a positive reaction which indicated to me the presence of an opiate.

Q. What did you do then, Agent DeFauw?

A. I retained custody of the evidence and then I searched Harvey Jackson's person and found neither narcotics nor money on him.

[180] Subsequent to the search I removed the kel set transmitter from his person.

Q. Did you have occasion to do anything then?

A. I observed Agent Meyer as he searched Harvey Jackson's vehicle. He found neither money nor narcotics in the vehicle.

Q. Then what happened?

A. We had a conference and then we returned to the offices of the Bureau of Narcotics where I weighed, tested and sealed the evidence.

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[188] Q. Agent DeFauw, calling your attention to the 5th day of January, 1966, did you have occasion to be in the vicinity of 67th and Stony Island Avenue in Chicago around 5:00 p.m.?

A. Yes, sir, I did.

Q. What, if anything, happened there?

A. I was in the presence of Agent Jackson, Harvey Jackson and Agent Kerstann.

Q. What, if anything, took place at that location and at that time?

A. We had a conference, and subsequent to the conference I searched Harvey Jackson. I found neither narcotics nor money on his person. I then placed the kel set transmitter beneath his outer clothing. I tested it to make sure it was functioning properly.

Q. Was it functioning properly?

A. Yes, sir, it was.

Q. What happened then?

A. I then observed Agent Jackson search Harvey Jackson's vehicle. He found neither narcotics nor money.

[189] Q. Calling your attention to approximately 5:30 p.m. in the vicinity of 6141 South Drexel, did you have occasion to be in that location at that time?

A. Yes, I did.

Q. What were you doing there, sir?

A. Prior to arriving there, I furnished Harvey Jackson——

Mr. Eskridge: Objection. The question was what was he doing there.

The Court: I think that is right.

Mr. Eskridge: I move it be stricken.

The Court: That was the question. Will you answer that question, please, Mr. Witness.

By the Witness:

A. I instituted surveillance of Harvey Jackson's residence at 6141 South Drexel.

By Mr. McDonnell:

Q. Calling your attention to approximately 5:00 p.m. on the 5th of January, 1966, did you have occasion to——

Mr. Eskridge: Objection, your Honor. This is what I am objecting to. He is suggesting in the form of questions the answers to be given by the witness.

[190] The Court: I haven't heard the question yet. I can't tell. I overrule the objection.

By Mr. McDonnell:

Q. You testified that you—Strike the last question, please—You testified that you strapped a kel set onto the informant Harvey Jackson around 5:00 p.m. at 67th and Stony Island Avenue, is that correct, sir?

A. That is correct.

Q. Did you do any other thing to the informant?

A. Yes. I furnished Harvey Jackson with $1300 of previously-recorded official advance funds.

Q. What happened then, sir?

A. Harvey Jackson and Agent Jackson then entered Harvey Jackson's vehicle and proceeded to 6141 South Drexel.

Q. What did you do?

A. I instituted surveillance in that vicinity.

Q. Calling your attention to 6:20 p.m. that night, did you have occasion to see anybody that you knew?

[191] A. Yes, sir, I did.

Q. Who did you see?

A. I observed the defendant James White park his 1962 black Cadillac convertible in front of the informant's residence and enter 6141 South Drexel.

Q. What happened after his entry into that location, sir?

A. After his entry I heard the defendant White's voice and I heard Harvey Jackson's voice.

Q. Do you know what they said?

A. Just generally. I recollect just generally what the conversation was.

Q. Give us your general recollection.

Mr. Eskridge: Objection.

The Court: I would say that the better form to ask the witness what he heard as best he can recall.

Mr. McDonnell: All right, your Honor.

The Court: I sustain the objection to the question as put.

By Mr. McDonnell:

[192] Q. Agent DeFauw, would you tell his Honor, Judge Hoffman, and the ladies and gentlemen of the jury the conversation that you heard between the defendant James White and the informant Harvey Jackson as you remember it?

A. As I remember, I heard the defendant White state, "Do you have the $1300?"

I heard Harvey Jackson state that he did.

Q. Is that the extent of the conversation as you recall it, sir?

A. I heard Harvey Jackson mumbling some numbers, and then I heard the defendant White say, "Let me count the money so I know it's right." Then I heard the defendant White mumble some numbers.

Q. Is that all you heard or all that you remember hearing, sir?

A. To the best of my recollection, yes.

Q. Is your recollection exhausted as to what you heard on that occasion?

A. Yes, it is.

Q. Can your recollection be refreshed by anything?

A. Yes.

Q. What will refresh your recollection?

[193] A. The written report which was submitted which contained the events that took place on that date.

Mr. McDonnell: Mark this as Government's Exhibit W.

(Said exhibit was thereupon marked Government's Exhibit W for identification.)

By Mr. McDonnell:

Q. I now show you, Agent DeFauw, what has been previously marked as Government's Exhibit W for identification and I ask if that will refresh your recollection?

A. Yes, it will.

Q. Would you look it over, please?

Have you finished?

A. Yes, I have.

Q. Does that refresh your recollection, sir?

A. Yes, sir, it does.

Q. Would you tell Judge Hoffman and the ladies and gentlemen of the jury the conversation as your recollection is refreshed on it?

[194] A. After I heard the defendant James A. White finish counting the $1300, I then heard him advise the informant that the informant owed him an additional $950 and he wanted the money by Friday.

He also instructed the informant that he was to pay the money at the Dining House Aluminer at 7:00 p.m. on the date requested. He stated that he might leave town and he wanted to get stuff not only for the informant but also for Harry B. and his brother. He then stated that he would like the informant to purchase $12,000 worth of heroin at a time and he stated that the informant would have to come up with the money in advance before he would make the delivery. He stated that there was going to be a panic in the near future. He then said that he had to leave, he had a couple more stops to make, and that terminated the conversation.

Q. After the conversation was terminated, what, if anything, occurred?

A. I observed the defendant White leave 6141 South Drexel, enter his '62 Cadillac convertible, and I followed him to the vicinity of 76th and South Halsted.

[195] Q. What happened at that location?

A. I observed the defendant White enter the Dining House Aluminer Restaurant located at 7537 South Halsted.

Q. Do you know who owns that restaurant?

A. No, sir, I do not.

Q. What happened after the defendant White entered the restaurant?

A. I continued surveillance in that area until approximately 12:00 midnight when the surveillance was discontinued.

Q. What did you do then?

A. Returned to the offices of the Bureau of Narcotics.

Q. Calling your attention to January 7, 1966, at approximately 5:30 p.m., did you have occasion to be in the vicinity of 59th Street and Stony Island Avenue in the City of Chicago?

A. Yes, sir.

Q. Were you alone, sir?

A. I was with Agent Kerstann.

Q. Were there any other people around that you knew?

A. There were other agents in the vicinity.

[196] Q. What happened at that location and at that time?

A. We met with Harvey Jackson and we had a conversation.

Q. After the conversation ended, what, if anything, did you do?

A. I searched Harvey Jackson, found neither money nor narcotics on his person. Then I placed the kel set transmitter on Harvey Jackson beneath his outer clothing. I tested the transmitter to make sure it was working.

Q. Was it in working condition?

A. Yes, it was.

Q. What happened then?

A. Agent Kerstann searched Harvey Jackson's vehicle, found neither money nor narcotics in it. I then furnished Harvey Jackson with $950 of previously-recorded official advance funds.

Q. What happened after you gave the $950 to Harvey Jackson?

A. I then followed Harvey Jackson as he drove to the vicinity of 76th and South Halsted Street.

Q. What did you see at that location?

[197] A. I observed him park his vehicle almost directly across the street from the Dining House Aluminer, which is a restaurant.

Q. Then what happened?

A. I observed him leave his vehicle and enter that establishment.

Q. After Harvey Jackson entered the establishment, the Dining House Aluminer, what, if anything, did you do?

A. I continued survellance in the vicinity of the establishment.

Q. Calling your attention to approximately 7:00 p.m., what, if anything, did you do at that time?

A. I heard the voice of the defendant James A. White.

Mr. Eskridge: Objection, your Honor. The question was what did he do.

The Court: What did you?

By the Witness:

A. I continued surveillance in the vicinity of 7537 South Halsted.

By Mr. McDonnell:

Q. Did you hear something at that time?

[198] A. Yes, I did.

Q. What did you hear?

A. I heard the voice of the defendant James A. White and I heard the voice of Harvey Jackson.

Q. Will you relate to the best of your memory what you heard Harvey Jackson say and what you heard James A. White say?

A. At this time I don't recall exactly the nature of the conversation.

Q. Is your memory totally exhausted as to the nature of the conversation?

A. Yes, it is.

Q. Will something refresh your recollection?

A. Yes.

Q. What will refresh your recollection?

A. The memorandum report which was prepared which contains the events that happened on that date.

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[200] Q. I show you what has been previously marked as Government's Exhibit V and ask you if that refreshes your recollection, sir?

A. Yes, it does.

Q. Would you tell Judge Hoffman and the ladies and gentlemen of the jury the conversation you overheard at that time and place?

A. I heard the defendant White say "I'm going to pick your stuff up tomorrow."

He then asked Harvey Jackson if he had the $950, and I heard Harvey Jackson answer that he did.

I then heard Harvey Jackson count various numbers, after which I heard him say, "Now you count it to make sure it's right."

Then I heard the defendant White's voice count the money. He advised Harvey Jackson that the price of the heroin would increase $100 per eighth of a kilogram, and he further advised Harvey Jackson that he would meet [201] him at Randolph and Wells Street and he asked Jackson if he knew where that was. Then I heard the defendant White state "Instead of meeting me at Randolph and Wells, meet me at Lake and Wells."

Mr. Eskridge: I am sorry. I missed that.

The Witness: At 6:00 p.m.

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By Mr. McDonnell:

Q. Was that the end of the conversation?

A. No, it wasn't.

Q. Would you relate a further conversation if you remember it?

A. I also heard the defendant White state that he was going to get three things, and that the package that he was going to give the informant, the informant would be required to pay $2,500 for the amount which he was to receive.

I further heard the defendant White state he wanted [202] the informant Jackson to sit on the other things for him.

Q. What happened then, Agent DeFauw?

A. That terminated the conversation.

Q. What, if anything, did you do at that time?

A. A short while later I observed Harvey Jackson leave the Dining House Aluminer, enter his vehicle, and he drove to the vicinity of 76th and Vincennes Street where Agent Kerstann and I met him.

Q. What happened at that time at that location?

A. I had a conversation with Harvey Jackson. Subsequent to the conversation I searched him and found neither money or narcotics on his person.

I then removed the kel set transmitter from his person and advised him to meet me on January 8th at approximately 3:30 p.m.

Q. Now calling your attention to January 8, 1966, at approximately 6:00 p.m., did you have occasion to be in the vicinity of State and Randolph Streets here in the City of Chicago?

A. Yes. I was in that vicinity.

[203] Q. What were you doing there?

A. I was conducting surveillance.

Q. Conducting surveillance on what?

A. Of the vicinity of the bus stop, which is located at Randolph and State.

Q. Did you see somebody that you knew?

A. Yes, I observed Sam Minerva standing in the bus stop which is located at the northeast corner of Randolph and State Streets.

Q. What was he doing?

A. He was standing at the bus stop and he had a brown leather briefcase under his left arm.

Q. What happened at that time?

A. I continued surveillance of Sam Minerva along with other agents.

Q. Do you know Agent Allen Pringle and Agent Charles Hill of the Federal Bureau of Narcotics?

A. Yes, sir, I do.

Q. Did you have a conversation with them that day at that time?

A. Agent Pringle advised me that——

Mr. Eskridge: Objection.

[204] The Court: Yes. The answer to that is yes or no. Did you know?

That is what you want to know, isn't it?

Mr. McDonnell: Yes, sir.

By the Witness:

A. Yes, sir, I do know them.

The Court: He says he knew them. Ask another question.

By Mr. McDonnell:

Q. Did you have a conversation with them at around 6:00 or 6:05 p.m.?

A. Yes, I did.

Q. After this conversation what did you do?

A. I remained in the vicinity of the bus stop in which Sam Minerva was standing.

Q. Did you see anybody at around 6:05 p.m. that you knew?

A. Yes, I observed the defendant James A. White driving a 1958 blue Chevrolet station wagon.

Q. What did he do, if you know?

A. He was driving east on Randolph Street from Wabash and as he approached State Street, he drove north on State Street out of my view.

[205] Q. Did you have occasion to see him at any other time that night?

A. Yes. A few minutes later I observed him driving from Wabash onto Randolph Street in an easterly direction—in a westerly direction toward State Street.

Q. What did you do then?

A. I observed the defendant White pull in to the curb at the bus stop, reach over, open the right-hand passenger door of the station wagon.

Q. Where were you at this time?

A. I was approximately two feet from Sam Minerva.

Q. Would you tell us the conditions of the sidewalk there at that time?

A. There were many people standing in the bus stop.

Q. All right. Now after Mr. White pulled over in his car, what, if anything, occurred?

A. I observed the defendant White open the passenger door on the right side of his vehicle and I observed Sam Minerva approach the car. I heard the defendant White say, "Come on, man, give me the package. I've got to [206] get out of here."

Q. What happened then?

A. I observed Sam Minerva hand the brown leather briefcase into the car and state that he would pick up the money later.

Q. What did you do then, if anything?

A. At that time I immediately identified myself as a federal narcotic agent and placed the defendant White under arrest.

Q. What happened after you placed the defendant White under arrest?

A. I seized the brown leather briefcase which Sam Minerva handed him.

Q. What did you do with the brown leather briefcase?

A. I retained custody of the briefcase and later examined its contents.

Q. What did you find in the briefcase?

A. Inside the briefcase I observed four brown paper packages.

Q. Did you look into these packages or what did you do with these packages?

A. I examined the packages in the presence of Agent Meyer, Agent Vinsik and Agent Kerstann.

[207] Q. What did you find?

A. I found each of the brown paper packages to contain a white paper bag which further contained a plastic bag which contained a quantity of white powder.

Q. What, if anything, occurred at that time?

A. I performed a marquis reagent field test on a small portion of the white powder contained in the packages in the presence of Agents Kerstann, Vinsik and Meyer, and I observed a positive reaction indicating the presence of an opiate.

Q. Did you have occasion to do something with the four packages that you had?

A. I retained custody of them.

Q. What happened then, Agent DeFauw?

A. That evening I returned to the offices of the Bureau of Narcotics.

Q. Did you do anything at the Bureau of Narcotics?

A. Yes, I maintained custody of the evidence and I placed the evidence in my personal locker for safekeeping.

Q. Calling your attention to December 12, 1966——

[208] The Court: Do you mean that?

Mr. McDonnell: Excuse me, January 12, 1966.

By Mr. McDonnell:

Q. Did you have occasion to do something with the packages that you received on January 8, 1966?

A. Yes, I removed the brown briefcase and the four brown paper packages and all the contents from my personal locker and I weighed, tested and sealed the evidence in two separate lock-seal type evidence envelopes in the presence of Agent Kerstann.

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[228] William C. Kerstann, a witness called by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct examination.

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[229] Q. Calling your attention to approximately 8:25 p.m. on the night of December 16, 1965, do you know where you were at that time?

A. Yes, sir, I do.

Q. Where were you?

A. I was in the vicinity of State and Randolph, Chicago, Illinois.

Q. What were you doing there, sir?

A. At that time Agent DeFauw and I were conducting surveillance of James A. White who at that time was in a 1958 model Oldsmobile owned by Harvey Jackson.

Q. Did you see the defendant James White on that occasion?

A. Yes, sir, I did.

Q. Would you point out the man you saw on that occasion?

A. He is the gentlemen seated at the defense table directly to the left of Mr. Eskridge.

Mr. McDonnell: Let the record reflect, your Honor, the fact that the witness has identified the defendant in this [230] cause?

The Court: The record may indicate that this witness has identified the defendant in open court.

By Mr. McDonnell:

Q. Agent Kerstann, you say you were with Agent DeFauw at this time, is that correct?

A. Yes, sir.

Q. What, if anything, did you see the defendant do?

A. I observed Mr. White drive west on Randolph Street in the 1958 Oldsmobile. As he approached the intersection of State and Randolph, he stopped the automobile at that location and motion to a white male subject who was standing in the bus stop on the northeast corner of State and Randolph.

Q. Do you know who the white male subject was, or did you know at that time who the white male subject was?

A. At that time, no, sir, I did not.

Q. Do you know who he is now, sir?

A. Yes, sir, I do.

Q. Do you know his name?

[231] A. Yes, I do.

Q. What is that name?

A. His name is Sam Minerva.

Q. After the defendant motion to Mr. Minerva, what happened, if you remember?

A. The subject came over and entered the car on the passenger side and then Mr. White continued driving west on Randolph. At approximately Clark and Randolph the white male subject left the car and walked out of my view.

Q. What did you do then?

A. At that time Agent DeFauw left the car and I continued to follow Mr. White.

Q. Where did you follow him?

A. I followed him to the intersection of Lake and Wells.

At that time he stopped the car and he motioned to Harvey Jackson or Harvey Jackson, who was standing on the southwest corner, entered the car at that time.

Q. What happened then?

A. At that time I heard a conversation which was transmitted by a radio transmitter which was on the informant's person.

Q. Did you recognize the voices in the [232] conversation or the voice in the conversation?

A. Yes, I did.

Q. Whose voices were they?

A. They were the voices of Harvey Jackson and Mr. White.

Q. Had you heard the voice of Harvey Jackson before this time?

A. Yes, sir, on numerous occasions.

Q. Had you heard the voice of James A. White before this time?

A. Yes, sir, on several occasions also.

Q. You recognized these voices, is that correct?

A. Yes, sir, I did.

Q. To the best of your memory, Agent Kerstann, will you repeat the conversation that was had between the defendant White and the informant Harvey Jackson?

A. Mr. White said that he had just met his man on time and gotten the package from him. He then told Harvey Jackson that he would leave the package on the seat beside him and in case he got stopped by the police, he could get rid of it. Then Mr. White said that he had to meet [233] another man and that he would have to go.

Q. Then what happened, if you remember?

A. At this time Mr. White left the car at the intersection of Lake and Wells. I stopped behind them a short distance away, approximately half a block, and then I watched Mr. White proceed out of my view.

After he had proceeded out of my view, I got out of my car and walked up to Harvey Jackson's car.

Q. What did you do when you got to Harvey Jackson's automobile?

A. I entered the car with Harvey Jackson and at that time Harvey Jackson pointed to the brown paper sack which was on the seat beside him.

Q. After he pointed to the brown paper sack, what happened?

A. I parted the top of the brown paper sack and I noticed that it contained a white paper sack, and I did not do anything further with the sack at this time.

Q. I now show you what has been previously marked as Government's Exhibit No. 5 for identi- [234] fication and No. 6 for identification and I ask you if you recognize these two items, sir?

A. Yes, I can identify these.

Q. What are these items?

A. These are the two sacks. They are a different color at this time because they have been processed through certain chemicals. These are the two sacks which I saw in the front seat of Harvey Jackson's vehicle.

Q. How do you recognize them?

A. The 3-by-5 card which is attached to them bears my initials.

Q. What did you do after you saw these sacks?

A. I had a short conversation with Harvey Jackson and after that conversation Harvey Jackson drove to the area of Columbus Drive and Congress.

Q. What occurred at that location?

A. We stopped at that location and waited for Agent DeFauw.

Q. Did Agent DeFauw come to that location?

A. Yes, he did.

Q. About what time did he arrive there?

A. I don't recall the exact time. It [235] was sometime between 9:00 and 9:30 p.m.

Q. What occurred when he did arrive there?

A. He entered the car at that time and at that time Mr. Jackson pointed to the brown paper sack and Mr. DeFauw picked it up, or he handed the sack to Mr. DeFauw. Mr. DeFauw then opened the sack and took out the white paper sack.

Q. What happened then?

A. He then opened the white paper sack and I noted that it contained a plastic bag which contained a large quantity of white powder.

Q. What, if anything, did you do or did you see?

A. I then observed Agent DeFauw perform a marquis

reagent field test on a sample of this white powder and I noticed a positive reaction.

Q. What happened then?

A. Agent DeFauw then searched the informant. He found no money nor narcotics at this time. Then he removed the small radio transmitter from the informant's person.

Q. Did you have occasion to do anything then?

A. Yes. After Agent DeFauw and Mr. Jackson [236] left the car, I searched the car and found no money nor narcotics in the car at that time.

Q. What happened after you searched the informant's car?

A. Agent DeFauw, Mr. Jackson and I then came to the office of the Bureau of Narcotics.

Q. What occurred there, if you remember?

A. At that time Agent DeFauw removed the evidence and placed it in a substitute container. I initialed the container, then Agent DeFauw weighed it and sealed it in a government lock-sealed evidence envelope.

* * * * *

[239] Q. Now, Agent Kerstann, do you know Harvey Jackson?

A. Yes, sir, I do.

Q When did you first know him? When did you first meet him?

A. I first met him sometime the first part of December, 1965.

Q. Have you seen him since?

A. Yes, sir, I have.

Q. When was the last time you saw him?

A. To the best of my recollection, it was sometime in the month of March of 1966.

Q. Do you know where he was living on that occasion?

A. At that time I believe he was still living on South Drexel here in Chicago.

Q. Did you talk to him on that occasion?

A. Yes, sir, I did.

Q. Have you since talked to him?

A. Yes, sir, I have.

Q. Do you know where he is now?

A. No, sir, I do not.

[240] Q. When was the last time you had any contact with him?

A. To the best of my recollection, it would be sometime in either the month of June or July of this year.

Q. Have you made any efforts to contact him?

A. Yes, I have.

Q. Would you tell exactly what efforts you have made to contact Harvey Jackson?

A. Well, I have contacted his wife on several occasions in an attempt to elicit from her information as to his whereabouts, and on each occasion she would not tell me or she would not give me any information in regard to where he might be.

Q. Is that all you have done?

A. No, sir. I have also conducted a search through the Chicago Police Department. I also contacted the Motor Vehicle Department in regard to his driver's license and also any information on his 1966 registration on his car. We did obtain that, but it was registered to [241] his old address.

Q. What else have you done, if anything?

A. We have also contacted the Milwaukee Police Department in regard to the fact that we figured or we had a belief he may be in that area.

Q. What did that contact reveal, if anything?

A. It revealed negative information as far as we were concerned.

Q. When was the last time that you contacted Harvey Jackson's wife concerning the whereabouts of Mr. Harvey Jackson?

A. I have attempted in the last couple of days but I have been unsuccessful. The last time I successfully contacted here would probably be about sometime in the month of September.

Q. Have your attempts to locate—what have your attempts to locate Harvey Jackson revealed, if anything?

A. Well, they reveal, I believe, he is still in the Chicago area but as far as an exact location, I have been unable to find him.

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Cross-Examination.

[242] By Mr. Eskridge:

• • • • •

[254] Q. You say you last contacted his wife [255] Mrs. Jackson in September, 1966; how did you contact her?

A. By telephone.

Q. Did you ever see Mrs. Jackson?

A. Not to my recollection, no.

Q. How do you know it was Mrs. Jackson you were talking to?

A. She answered my questions in regard to her husband Harvey so I assumed that it was Mrs. Jackson.

Q. Did you ask her?

A. I asked her if she had heard from her husband.

A. And this person on the other end of the telephone said what?

A. Said yes, that she had.

Q. What else did she say?

A. She said that he had had an automobile accident, that he had been in the hospital for a short time, and that she did not know where he was at this time.

Q. Did you ask her which hospital he was in?

A. Yes, I did.

Q. Which hospital was he in?

[256] A. She did not know.

Q. Did you check the hospitals?

A. I checked a few hospitals. I could not check every hospital in the area. And she was under the impression that the accident did not happen in Chicago, so I had no way of checking every hospital in the State of Illinois.

Q. Did you ask her where approximately this hospital was?

A. I did, yes.

Q. What did she say?

A. She did not know.

Q. Did you check any of the local hospitals around the City of Chicago?

Mr. Mc Donnell: Objection, your Honor. Asked and answered.

The Court: I think the question was answered. I will sustain the objection.

By Mr. Eskridge:

Q. Did you search the records of automobile accidents kept by the Secretary of State?

A. Yes, I did.

Q. What did you find out?

A. I could find no record of any auto- [257] mobile accident involving Mr. Jackson.

Q. Did you check with the Chicago Police Department to see whether or not they had him under arrest?

A. Yes, I did.

Q. What did you find out?

A. No record.

Q. Did you check the Cook County Hospital?

A. I don't recall.

Q. You don't. Did you or didn't you?

Mr. Mc Donnell: I object to counsel arguing with the witness.

The Court: That is argument. I sustain the objection.

By Mr. Eskridge:

Q. Did you check Provident Hospital?

The Court: Will you let me rule on the objection, sir, if you don't mind?

Mr. Eskridge: I am sorry. I withdraw the question.

The Court: I have a place in this, too. This isn't just between you and the witness, sir.

I sustain the objection.

[258] By Mr. Eskridge:

Q. Did you check at Provident Hospital?

A. I don't recall which hospitals I checked, sir.

Q. You have no recollection at all?

A. Not at this time, no.

Q. Why did you check the Milwaukee Police Department?

A. Because for a period of time I was receiving long distance telephone calls from Mr. Jackson from Milwaukee.

Q. Did you check the hospitals there?

A. No, sir, I did not.

Q. Did you check the Municipal Court index to see whether or not he was in jail?

Mr. Mc Donnell: Object, your Honor, as asked and answered.

The Court: I sustain the objection.

The Municipal Court index wouldn't indicate whether a man was in jail or not. He might be in jail as a result of my order. That wouldn't appear in the Municipal Court index.

By Mr. Eskridge:

[259] Q. Did you check the Police Department arrest records to see whether or not he was under arrest?

Mr. Mc Donnell: I object. I believe that has been asked and answered.

The Court: I will sustain the objection.

By Mr. Eskridge:

Q. Did you check the files of this court to see whether or not he was under arrest in this court?

A. I don't believe I did, sir.

Q. When you say you tried within the last couple of days, what did you do?

A. I called Mrs. Jackson.

Q. Where did you call her?

A. I tried her home phone number.

Q. You tried her home phone number. Did anybody answer?

A. No, sir.

Q. And that is the extent of it?

A. No, I tried another phone number.

Q. What number? What other phone number did you try?

[260] A. It is a phone number of where she works at this time.

Q. Did you talk to her?

A. No, sir, I did not.

Q. Would you give us that telephone number?

Mr. Mc Donnell: I object to that, your Honor.

The Court: Why?

Mr. Mc Donnell: I don't think it is relevant in this case.

I tell you what, Judge, I will withdraw the objection and we will give Mr. Eskridge the telephone number.

The Court: If you know it, you may give it.

The Witness: I don't know the phone number as such. I know the building she works in and how she can be reached. The phone number is in my files in the office.

Mr. Eskridge: I take it counsel will give me the telephone number and address.

Mr. Mc Donnell: You can have it right now, Mr. Eskridge.

Will you be good enough to write it [261] down and give it back to me, please?

By Mr. Eskridge:

Q. Did you call at this telephone number where she works to talk to her?

A. I called the number. I did not talk to her, no.

Q. Is this within the last couple of days?

A. Yes, sir.

Mr. Eskridge: That is all.

The Court: Have you finished your cross examination?

Mr. Eskridge: Yes, your Honor.

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[263] David Joseph Connolly, a witness called by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

* * * * *

[267] Q. Calling your attention to around 5:45 p.m. on December 29, 1965, did you have occasion to see the defendant James A. White at that time on that day?

A. Yes, I did.

Q. Where did you see him?

A. As he departed from Hyman's Clothing Store.

[268] Q. What did you do?

A. I observed him as he walked north on the east side of the street to the parking lot where he had previously

parked his car. He entered his car then and drove to Clark Street and proceeded south. I followed him in my vehicle as he proceeded south to Lake Street. At Lake he turned east and he proceeded east on Lake Street to Wabash, south on Wabash to Randolph, and when he approached Randolph, he turned west. Then I continued to follow him. He manipulated the vehicle he was driving into the northbound or, rather, the northern lanes westbound until he reached the intersection of State and Randolph.

Q. What occurred there?

A. At that location I observed Agent Meyer. Agent Meyer signaled to me and I understood the signal and as a result of that I continued driving and I drove to the area of the tavern at 225 North Clark Street.

Q. Proceed.

A. And I continued to maintain surveillance at the tavern.

Q. Calling your attention to approxi- [269] mately 6:10 or 6:15 p.m., Agent Connolly, did you have occasion to see something at that time?

A. Yes, I did.

Q. What did you see, please?

A. While I was maintaining surveillance of the tavern, I saw James White accompanied by Harry B. Williams drive to and park in front of the tavern, the tavern that is at 225 North Clark Street. White was driving the car, Harry B. Williams was a passenger. White got out of the car and proceeded to and entered the tavern at 225 North Clark. He was in there just a short period of time, perhaps five minutes, and he left that tavern and he returned to his automobile and he drove that automobile south to Clark Street out of my view. I noticed at that time that Agent Meyer in his vehicle was following the vehicle driven by Mr. White.

Q. What did you do then?

A. I continued to maintain surveillance of the tavern.

Q. What was the next thing you saw, if anything?

A. At about 6:25 p.m. I saw Harvey Jackson [270] leave that tavern. He walked north to the intersection of Wacker Drive and Clark Street to the same parking lot that White had previously parked in and he entered his vehicle, a 1958 Oldsmobile.

Q. What did you do then?

A. I then continued to maintain surveillance of Harvey Jackson as he drove that vehicle south on Clark Street across Lake Street to Randolph where he also turned west. At that location he proceeded west to Walls and then north on Wells to Lake Street.

Q. What happened there, if you remember?

A. I noticed that the car previously driven by White was parked at the southeast corner of Wells and Lake Street. I saw Jackson as he drove his car and parked it in front of the stationwagon in which White and Williams were seated.

Q. What did you do then?

A. Again I continued to maintain surveillance and I saw White leave his car carrying a brown paper bag in his left hand. He walked to the driver's side of Jackson's car and he handed the brown paper bag through the window to Jackson [271] who was seated behind the wheel of his car.

Q. What happened then, Agent Connolly?

A. There appeared to be a brief conversation.

Q. Could you overhear that conversation?

A. Yes, sir.

Q. Did you recognize the voices in that conversation?

A. No, not both of them.

Q. After the conversation had ended, what happened, if you remember?

A. White returned empty-handed to his car and he seated himself behind the wheel, the driver's seat. Then I saw Harry B. Williams get out of White's car also carrying a paper bag. He carried that bag to the car of Jackson and he entered in the passenger side of the front seat with Jackson.

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[273] Q. Calling your attention specifically to 5:15 p.m. on January 8, 1966, did you have occasion to see the defendant James White?

A. Yes, I did.

Q. Will you tell his Honor Judge Hoffman and the ladies and gentlemen of the jury what you saw, sir?

A. Again White left his house, again in the same vehicle, that is, the '58 blue Chevrolet station wagon which was parked outside. He got into the car, he drove that car from that location to the Dan Ryan, and as he reached the area

[274] of Garfield Park, as a result of congested traffic, I lost him from view.

Q. Calling your attention to approximately 6:05 p.m., January 8, 1966, do you know where you were at that time?

A. Yes, sir.

Q. Where were you?

A. I was parked in the vicinity of Randolph and State Streets.

Q. Did you have occasion to see somebody at that location?

A. Yes, sir.

Q. Who did you see?

A. I saw both a person by the name of Sam Minerva and I saw a car driven by White, the same car, as he approached the corner of State and Randolph.

Q. What, if anything, did you do?

A. I got out of my car as he approached that area, and then those two people were placed under arrest as a number of agents surrounded the area.

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[309] Robert J. DeFauw, a witness called by and on behalf of the government, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

* * * * *

Cross-examination.

By Mr. Eskridge:

* * * * *

[321] Q. Did you, as you sat in the car, record this conversation on something?

A. I wrote the conversation in longhand on paper. I took notes relative to the conversation, yes, sir.

[322] Q. You took notes of the whole entire conversation?

A. The conversation I understood, I took notes, yes, sir.

* * * * *

[377] ARTHUR LEWIS, a witness called by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct examination.

* * * * *

[379] Q. Calling your attention to December 29, 1965, at approximately 4:30 p.m., do you recall where you were, Mr. Lewis?

A. Yes, sir. I was on duty on December 29, 1965. I was in a radio car at the area of 7500 South Wentworth Street here in Chicago, Illinois.

Q. What were you doing there, sir?

A. I was in the radio car with Narcotic Agent David W. Connolly, who was the driver. We were maintaining a surveillance of the residence at 7500 South Wentworth at about 4:30 p.m. on that date.

Q. Do you know who lives there, or who lived there at that time?

A. Yes, sir, I did.

Q. Who lived there?

A. The defendant James White.

Q. Now specially calling your attention to approximately 4:30, what, if anything, did you see, sir?

A. At approximately 4:30 p.m. on December [380] 29, 1965, while in that area, that is, at 7500 South Wentworth, I observed the defendant James White leave that building. It is a one-family home. I observed him come out of the front door and enter a blue Chevrolet station wagon. I believe it was about a 1958, the year was about a 1958. He was carrying a small black briefcase.

Q. What then did you do, if anything?

A. After Mr. White entered the Chevrolet station wagon, Agent Connolly and I took up surveillance of the moving vehicle being driven by Mr. White.

Q. When you say you took up surveillance, do you mean you followed him, sir?

A. That is correct.

Q. Do you recall where you followed him?

A. It is my recollection that we followed him north on

State Street into the Loop area through Van Buren and then to the area of Clark and Wacker.

Q. When you got to the area of Clark and Wacker, what, if anything, happened, if you recall?

A. At about the southeast corner of Clark and Wacker, Mr. White pulled the car into [381] a parking lot, turned the car over to an attendant and got out.

Q. What did you do then?

A. I left the vehicle which was being driven by Agent Connolly and followed the defendant White into a tavern at —I believe the address was 219 North Clark.

Q. Are you sure of that address?

A. Yes, sir, I am sure it was 219 North Clark.

Q. What did you do after you went to the tavern?

A. Let's see. It was about 5:05 or 5:15 p.m. Mr. White had gone in before me. I came in immediately after him and I observed him standing at the center of the tavern talking to a man known to me as Harry B. Williams.

Q. How long did you remain in the tavern, Agent Lewis?

A. I remained in the tavern until approximately 6:45 or 7:00 p.m.

Q. Did the defendant James A. White remain in the tavern that long?

A. No, sir, he did not.

[382] Q. What did he do?

A. As I previously stated, at about 5:10 he entered the tavern. He talked with Harry B. White for about ten minutes and he left,—that is, the defendant White left at about 5:20 p.m. At about 5:25 p.m. Harry B. Williams left.

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[391] VERNON D. MEYER, a witness called by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct examination.

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[395] Q. Now calling your attention to approximately 6:05 p.m. on December 29, 1965, do you know where you were at this time, sir?

A. Yes, sir, I do.

Q. Where were you?

A. I was at the corner of State and Randolph Streets.

Q. What occurred there, if anything?

[396] A. At that time I saw James White drive to the northeast corner of State and Randolph in a 1958 blue Chevrolet station wagon. I saw a person that I now know as Sam Minerva who was carrying a white shoe box under his arm enter the car with James White.

Q. What did you do then, if anything?

A. I followed James White and Sam Minerva as they drove west on Randolph Street across State Street for about a half a block and then stopped. At that location the person I now know as Sam Minerva got out of the car carrying a black briefcase. He did not have the white shoe box.

Q. What happened then after Mr. Minerva exited car?

A. I received a signal from Agent Connolly and I then followed James White as he drove west on Randolph Street to the front of the Greyhound bus station. At that location he stopped his car and a person that I now know as Harry B. Williams entered the car with him.

Q. What did you do then?

A. I followed James White and Harry B. Williams to the front of the 225 Club on North [397] Clark Street.

Q. What happened at that location?

A. At that location James White got out of the car. Harry B. Williams remained seated in the car and James White entered the 225 Club.

Q. Did you have occasion to remain in that area?

A. I did until James White came out and returned to his car and drove to the southeast corner of Lake and Wells Street where he parked.

Q. What did you do?

A. I took a position on the corner of Lake and Wells where I could see Mr. White's car and waited.

Q. What, if anything, did you see?

A. A few minutes later I saw Harvey Jackson arrive in his car, park on the same corner in front of the car that James White was driving.

Q. Now you mentioned the name James White. Do you know the defendant in this cause, James A. White?

A. Yes, sir, I do.

Q. Will you point him out to me?

A. Yes, he is seated at counsel table [398] to my left on the left-hand of his attorney.

Mr. Mc Donnell: May the record indicate that the witness has identified the defendant in open court, your Honor?

The Court: Yes, the record may indicate that this witness has identified the defendant White in open court.

By Mr. Mc Donnell:

Q. Now after you saw the defendant James White park his automobile, what, if anything, occurred?

A. James White got out of his car carrying a brown paper sack, walked to the driver's side of Harvey Jackson's car and handed the sack to Harvey Jackson. He then asked Harvey Jackson if he would take Harry B. south with him and Harvey Jackson said yes.

Q. Did you recognize the voices on the transmitter?

A. Yes, sir, I did.

Q. Had you heard these voices before?

A. Yes, sir, I had.

Mr. Eskridge: I beg your pardon, your Honor, I missed some of this testimony.

[399] The Court: Would you like to have it read?

Mr. Eskridge: Yes.

The Court: Read it.

(Question read.)

The Court: You may continue.

By Mr. Mc Donnell:

Q. Did you recognize these voices?

A. Yes, I did.

Q. Whose voices were they?

A. They were the voices of Harvey Jackson and James White.

Q. Would you repeat to the best of your memory what the voices said?

A. Mr. White said, "Will you take Harry B. south with you?" And Harvey Jackson said, "Yes, I will."

Q. What happened then?

A. At that time Mr. White returned to his car and briefly thereafter Harry B. Williams got out of his car and walked to the car of Harvey Jackson and entered that car with him.

Q. What did you do on this occasion, if anything?

[400] A. I then followed Harvey Jackson and Harry B. Williams south via the Lake Shore Drive to Midway Plaisance, west on Midway Plaisance to about Kimbark Street where Harry B. Williams got out of the car. Harvey Jackson then continued and drove to 62nd and Drexel where he parked the car he was driving.

Q. What happened there, if anything?

A. At that location I was met by Agent DeFauw and the two of us entered the car with Harvey Jackson.

Q. What occurred then?

A. Harvey Jackson then gave Agent DeFauw a brown paper sack which had inner containers holding a white powder.

Q. What happened then?

A. Agent Defauw removed the radio transmitter from Harvey Jackson, and in my presence conducted another search of Harvey Jackson and his automobile.

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[429] KENNETH CLOUD, a witness called by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct examination.

* * * * *

[430] Q. Agent Cloud, calling your attention to approximately 6:30 p.m. on January 7, 1966, do you know where you were at that time and on that date?

A. Yes, I was in the vicinity of the Aluminer Lounge located at 7537 Halsted Street.

Q. What were you doing there?

A. I was working in surveillance of the defendant James White.

Q. Calling your attention to specifically 6:30 p.m., what, if anything, did you do?

A. I went inside the Aluminer Club at that address and ordered a Schlitz beer and a hamburger and French fries.

Q. Do you know who was in the place at that time?

A. Yes, there was one female behind the bar and the defendant James White was seated at the bar.

[431] Q. Do you know Harvey Jackson?

A. Yes. Harvey Jackson was assisting the Bureau of Narcotics in the James White investigation.

Q. Did you have occasion to see Mr. Jackson that evening?

A. Yes, Harvey Jackson came into the Aluminer Lounge at approximately 7:00 or 7:10 p.m. and sat at the rear of the bar with the defendant James White.

Q. Did you see what they did, if anything?

A. Yes, Mr. Jackson had some conversation with the defendant.

Q. Could you overhear that conversation?

A. No, I couldn't. I wasn't close enough to them.

Q. What happened then?

A. During that conversation Harvey Jackson took out a sum of money. He counted that money on the bar and passed it to the defendant James White.

Q. What did White do, if anything?

A. White counted the money that he received from Mr. Jackson. He received the money [432] from Mr. Jackson and counted it.

Q. What happened then, if you remember?

A. They had some more conversation; then both Harvey Jackson and the defendant James White left the bar and walked to the rear of the club out through a back door.

Q. You could not see them after that, is that correct?

A. No, I couldn't.

Q. Did you have occasion to see the informant Harvey Jackson later on that evening?

A. Yes, they reappeared from the back of the club, Harvey Jackson and James White. They had some more conversation and then Harvey Jackson left the club altogether.

Q. About what time was this, if you remember?

A. Mr. Jackson left the club at approximately 8:00 p.m.

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[475] Mr. Eskridge: My next motion, your Honor, is to exclude these radio conversations on two grounds: One, that the radio conversations are in violation of the Illinois Eavesdropping Statute and in violation of the public policy of the State of Illinois.

Mr. Mc Donnell: I object to that, your Honor. They are not in violation of the federal policy or federal law. The defendant may not be prejudiced by electronically overheard conversations as evidenced by Lopez vs. United States, 373 U.S. 427 and 440, a 1963 case, United States vs. Pullings, 321 Fed. 2d 287 at page 295, 1963, a Seventh Circuit case; United States vs. Victoria, 284 Fed. 2d 451 at page 455, 1960, [476] a Seventh Circuit case; On Lee vs. U.S., 343 U.S. 747, a 1953 case; Rathburn vs. the United States, 355 U.S. 107 at page 111; U.S. vs. Walker, 320 Fed. 2d 472 at pages 474 and -6; McGee vs. Williams, 329 Fed. 2d 470, 1964, a Seventh Circuit case.

The Court: Mr. Eskridge, you are not the only lawyer who has raised the point. In the present state of the law, it is against you.

Is your motion to strike all testimony relating to these radio communications?

Mr. Eskridge: Yes, sir. And in addition——

The Court: I deny the motion. We have gone into it carefully in numerous cases here and I am satisfied that that evidence is admissible.

Mr. Eskridge: Does the Court take into consideration both the Fourth Amendment and the Fifth Amendment to the Constitution?

The Court: To the extent that the cases did, I do.

Mr. Eskridge: Your Honor, I would like at this time to move the Court to require the government to give me a demonstration of this radio transmitter Kel set in order for the Court and the jury to determine whether it is possible to determine voice identification over one of these sets.

[477] The Court: What is your authority for that?

Mr. Eskridge: I have no authority except that the radio communications which were testified to by the government

were words which they said they overheard over their transmitter and which they identified as the voice of the defendant James White.

The Court: You may reply.

Mr. Mc Donnell: We object to this, your Honor. There is no authority for this. He is demanding now that we put on a proposed defense for him after we have finished with our case. He has had ample time to cross examine the witnesses relative to the voices heard over the sets and at this time we object to any other display.

The Court: I deny the defendant's motion.

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[484] Canister Moore, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eskridge:

Q. What is your name?
A. My name is——

The Court: Oh, you are going to have to talk up. There is a man back there in the last row who wants to hear you.

By the Witness:

A. My name is Canister Moore.

By Mr. Eskridge:

Q. Spell your first name.
A. C-a-n-i-s-t-e-r.
Q. Where do you live, Mr. Moore?
A. 500 East 81st Street.
Q. What is your trade or occupation?
A. Photographer.

The Court: What is it?
The Witness: Photographer.

[485] By Mr. Eskridge:

Q. I show you Defendant's Exhibits Nos. 1 through 15 and ask you if you have seen those before.
A. Yes, sir.
Q. What are they?

Mr. Mc Donnell: Objection.
The Court: He may identify them. I will overrule the objection. He may tell what he thinks they are.

By the Witness:

A. Photographs.

By Mr. Eskridge:

Q. Do you know who prepared—who took the photographs and developed the photographs?
A. Yes, sir.
Q. Who?
A. Myself. I did.
Q. When did you take the pictures that are in your hand?
A. November 17th.
Q. That was last Wednesday?
A. Yes, sir.
Q. Would you look at Defendant's Exhibit No. 1, [486] the first one on top, and tell me does that truly portray what it purports to show as it existed on November 17, 1966?
A. This is a front entrance——

Mr. Mc Donnell: Objection, your Honor.
The Court: Yes, I will sustain the objection to the question.

By Mr. Eskridge:

Q. Does it truly portray what it purports to show as it existed on November 17, 1966?
A. Yes, sir, it does.
Q. Now look at each of those exhibits that are in front of you and tell me whether or not they truly portray what they purport to show as it existed on November 17, 1966.

Mr. Mc Donnell: I object to this, Judge.

A. 6141 Drexel.

Mr. McDonnell: I object to this. I don't know what he means by "entrance," your Honor. Is it the door or gate or——

The Witness: This is the open front door showing the stairs.

The Court: All he is doing now is trying to identify these exhibits. If they are not identified in a proper manner, we will deal appropriately with any offer that [489] is made.

Mr. McDonnell: Yes, sir.

By Mr. Eskridge:

Q. Which way was your camera facing as you took the photograph, Exhibit 3, and the entrance which you described?

A. My camera was facing east as I took the photograph.

Q. Now as you walked into the entrance at 6141 Drexel, in which direction did you walk to go into the entrance of the first floor group of rooms?

A. I walked east and made a turn to the left in order to go into the first room.

Q. As you stood there in that doorway, how many rooms did you see beginning at your left which would be westward and going to your right which would be eastward?

A. Two rooms visible.

Q. Would you describe the two rooms beginning to the left?

A. They would be to the right——

Q. To your right?

A. To my left.

[490] Mr. McDonnell: I object to Mr. Eskridge leading the witness here and correcting his——

The Court: Mr. Eskridge, may I suggest to you that all you may do at this point is have the witness identify the exhibits. If they are offered and admitted, you may then ask the witness some questions. All you may do now is have them identified if the witness can identify them.

I sustain the objection.

By Mr. Eskridge:

Q. Now as you stood there in the doorway beginning to your left and going to your right, how many rooms were there that you could see on the first floor?

Mr. McDonnell: Objection.
The Court: I sustain the objection.

By the Witness:

A. There were three rooms.

The Court: I strike the witness' answer and direct the jury to disregard it.
Did you understand me, Mr. Eskridge?
[491] Mr. Eskridge: Yes, your Honor.
The Court: You didn't seem to from your question that followed.

By Mr. Eskridge:

Q. Now I show you Exhibit No. 4 and ask you which way was your camera facing in that picture?
A. My camera was facing west.
Q. Exhibit No. 5, which way was your camera facing in that picture?
A. My camera was facing east.
Q. Would you describe the room that you were looking at as you looked east?

Mr. McDonnell: Objection, your Honor.
The Court: I sustain the objection.
Mr. Eskridge: I withdraw the question.
The Court: This witness is not here to tell about rooms yet. As I understand it, you are seeking to have Defendant's Exhibits 1 through 15, respectively, for identification, identified. The questions you are asking are not pointed toward identification; therefore I sustain the objection.

[492] By Mr. Eskridge:

Q. Will you look at Exhibit No. 6 and tell us in which direction was the camera facing on that picture?
A. The camera was facing east.
Q. And Exhibit 7?
A. The camera was facing east.

Q. Exhibit 8?
A. The camera was facing west.
Q. In which room?
A. In the farthest room.
Q. And the camera was facing which direction on No. 9?
A. The camera was facing east in the farthest room—pardon me, west, I am sorry.

Mr. McDonnell: I don't—may I object now, Judge, unless the witness clarifies his statement? I don't know which way the camera was.
The Court: I don't either.

By Mr. Eskridge:

Q. Would you look at Exhibit No. 9——

The Court: He made an answer to a question.

[493] By Mr. Eskridge:

Q. Tell us in which room you were and in which direction was the camera facing.
A. I was in the farthest room; the camera was facing west.
Q. Would you look at Exhibit No. 10 and tell us which room you were in and which way the camera was facing?
A. I was in the farthest room; the camera was facing west.
Q. Could you further identify the farthest room?
A. Yes.
Q. What kind of room was it?
A. It was——

Mr. McDonnell: Objection, your Honor.
The Court: I sustain the objection. We are not identifying rooms here, sir. I don't seem to get any contact with your mind. This witness may identify only the exhibit. He is not here at the moment to testify about the location of rooms. You may ask him only about those exhibits at this point, and if he can identify them, he may.

[494] By Mr. Eskridge:

Q. Would you look at Exhibit 11 and tell me——

The Court: Just ask him what they are.

By Mr. Eskridge:

Q. What is it?

A. Yes. It is a photograph of the farthest room facing west.

Q. The camera——

A. The camera was facing west.

Q. Would you look at Exhibit No. 12 and tell us what this is, which way the camera was facing?

A. The camera was facing west; the photograph is of the farthest room.

Q. Would you look at Exhibit No. 13 and tell us what that is and which way your camera was facing?

A. The camera was facing east and the farthest room.

Q. Would you look at No. 14 and tell us where that is and which way the camera was facing?

A. The camera was facing east and the farthest room.

Q. Would you look at No. 15 and tell me what that is?

[495] A. A photograph showing the west—west, and the entrance to the street.

Q. From where?

A. From the rooms and closets as they appear at 6141 Drexel.

Mr. McDonnell: I object. I don't think there has been a proper foundation for any of this.

The Court: Let me see them.

(Documents handed to the Court.)

The Court: Who are the boys in this picture? Are these your boys?

The Witness: No, sir.

The Court: They just happened to be there?

The Witness: Yes, sir.

The Court: The boys in the picture?

The Witness: Yes, sir.

The Court: The objections of the government to Defendant's Exhibits 1 to and including 15, respectively, for identification, will be sustained.

Mr. Eskridge: May I address the Court outside the presence of the jury, your Honor?

[496] The Court: On that ruling?

Mr. Eskridge: Yes, sir.

The Court: No, no. Those pictures just don't serve to prove anything. There has been no foundation laid for them and I will let my ruling stand. I will deny your request for a hearing outside the presence of the jury.

By Mr. Eskridge:

Q. Now the exhibits, Mr. Moore, Exhibits 1 through 15, where were you when these pictures were taken?

Mr. McDonnell: Objection, your Honor.

The Court: I sustain the objection.

I have sustained objections to the admission of these exhibits. You may not question the witness in respect to them now.

Mr. Eskridge: I want to ask him to describe the premises.

The Court: No. You may ask him anything that doesn't relate to exhibits which have been denied admission into evidence. That is, I do not say that any question you ask [497] will necessarily be proper; you certainly may not refer to exhibits, objection to which have been sustained.

Mr. Eskridge: Your Honor, one of the witnesses here testified that he was in a room, in the kitchen——

The Court: You just ask this witness any question you like that has nothing to do with these exhibits, and if they are proper, I will let the witness answer. If they are not, and if there is objection made, I will have to deal appropriately with the objection.

By Mr. Eskridge:

Q. Mr. Moore, as you approached the door, the outer door at 6141 Drexel, would you tell us on the front of the premises where that door was? Was it near the——

Mr. McDonnell: Objection to the leading question.

The Court: Yes. That is suggestive of the answer. I sustain the objection.

Mr. Eskridge: I withdraw the question.

[498] By Mr. Eskridge:

Q. Would you tell us how many doors lead into the front entrance of 6141 Drexel?

A. One door.

Q. Would you describe for us where that door is?
A. It is to the right of the building, to the south.
Q. At the south wall?
A. Yes, sir.
Q. How close to the south wall was that door?
A. Perhaps a foot or less.
Q. One foot or less?
A. Yes.
Q. Now as you opened the front door and stepped from the street into the entrance, what is the first thing you see?
A. A stairway.
Q. As you step into the inner—as you step into the door, what is the next opening that you see?
A. There is a door to the left.
Q. How far is that door from the entrance?
A. About three feet or more.
Q. Now as you stand in that door looking to the north, [499] how many rooms would you see beginning at your left?
A. One room.
Q. The room in front of you?
A. Yes.
Q. And is there another room that you may see from that door?

Mr. McDonnell: Objection, your Honor.
The Court: I sustain the objection.

By Mr. Eskridge:

Q. Would you describe the number of rooms that you see as you stand in that door?
A. Three rooms.
Q. Now did you go into the room—did you go in each of those three rooms?
A. Yes, sir.
Q. Describe each of the three rooms that you went into.
A. As you enter from the doorway, there is a large room to your left, there is a smaller room, and to your right there is a kitchen.
Q. Did you enter into the kitchen?
A. Yes, sir.
Q. Where was the opening in the wall which led into the kitchen?

[500] Mr. McDonnell: Objection.
The Court: I sustain the objection.

By Mr. Eskridge:

Q. Would you describe the west wall of the kitchen?
A. On the west wall is a door as you enter the kitchen.
Q. Where is that?
A. It is to the right.
Q. At which wall?
A. The south wall.
Q. Now did you enter the kitchen?
A. Yes, sir.
Q. How many doors did you see within the kitchen?
A. There was the rear entrance and the door to the right?
Q. Did you go into that door to the right that you speak of?
A. No, sir.
Q. On which walls were each of these doors?
A. A door on the west wall—east wall and south wall.
Q. Now would you describe the outward appearance of each of those doors.
[501] A. The outward appearance of each door is one flat layer of board.
Q. Did you within the kitchen see any doors or openings in the wall which had two doors?
A. No, sir.

Mr. McDonnell: Objection.
The Court: I sustain the objection.
Mr. McDonnell: I ask it be stricken.
The Court: I strike the answer of the witness and direct the jury to disregard it.
Mr. Eskridge: That is all, your Honor.
The Court: Is there any cross examination of this witness?
Mr. McDonnell: One question, your Honor.

Cross-examination.

By Mr. McDonnell:

Q. Were you ever in this house before November 17, 1966?

A. No, sir.

Mr. McDonnell: That is all.
The Court: You may go.

(Witness excused.)

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[503] MARY JACKSON, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Eskridge:

Q. Would you give us your name and your address?
A. Mary Jackson, 6549 Blackstone.

Q. Please keep your voice up. How long have you lived at 6549 Blackstone?
A. Approximately around about three weeks.

Q. From where did you move?
A. 6141 Drexel.

Q. Are you married or single?
A. I am married.

Q. To whom are you married?
A. To Harvey Jackson.

Q. Would you describe Harvey Jackson for us, his physical appearance?

Mr. McDonnell: I object to this.
The Court: I sustain the objection. I don't know how to describe a man. I don't know how the witness could [504] describe him. You mean is he tall, is he short?
Mr. Eskridge: Yes.
The Court: Is that what you want to know?
Mr. Eskridge: Yes, the physical description.
The Court: Is he tall or short?
The Witness: He is kind of short.
The Court: You don't object to short people, do you?
The Witness: No.

By Mr. Eskridge:

Q. Do you know what his height is?
A. Not exactly, I don't. I don't know whether he is—I don't know because I don't know my own.
Q. How long did you live at 6141 Drexel?
A. Two years.
Q. With whom did you live there?
A. By myself until February of this year.
Q. Who else lives there?
A. With my children.
Q. And who else?
A. And my husband, my husband and myself.
[505] Q. Who lives with you at 6549 Blackstone?
A. My husband and my children.
Q. And your husband's name is——?
A. Harvey Jackson.
Q. When is the last time you saw your husband Harvey Jackson?
A. Last night.
Q. Did anyone help you move from 6141 Drexel?

Mr. McDonnell: Objection, your Honor.

By the Witness:

A. My husband and——

The Court: I sustain the objection. If the witness made answer, I strike her answer and direct the jury to disregard it.

By Mr. Eskridge:

Q. Has your husband Harvey Jackson left the city as far as you know?

Mr. McDonnell: I object, your Honor.
The Court: I sustain the objection. She said she saw him last night.
Is that right, young lady?
The Witness: Yes, that is.

By Mr. Eskridge:

[506] Q. Within the last twelve months, do you know

whether or not your husband left the city for any extensive length of time?

A. Well, he had worked out of town.

Q. For how long a period of time?

A. Approximately around about a month or two, I think.

Q. Can you fix the time when that was?

A. No, I can't. I really can't because I didn't keep up with it too much.

Q. Was it in the winter of this year, the spring or the summer?

Mr. McDonnell: I object to that.

The Court: I sustain the objection.

You needn't answer that question.

By Mr. Eskridge:

Q. Can you fix the seasons of the year of 1966 when your husband went out of town?

Mr. McDonnell: Objection, your Honor. That is presuming he went out at all seasons.

The Court: I will sustain this objection. All you are entitled to ask is a "when" question, Mr. Eskridge.

By Mr. Eskridge:

[507] Q. Is that your best recollection, that you don't remember when it was?

A. Well, it could have been around about in July or August.

* * * * *

[508] Q. Now, Mrs. Jackson, I call your attention to on or about December 9, 1965. Were you living at 6141 Drexel at that time?

A. Yes, I was.

Q. Do you know a man named Carl Jackson?

A. No, I don't.

Q. I point to a man here, I point to a man who is Carl Jackson and ask you if you have ever seen this man before?

A. No, I haven't.

Q. What time in December, 1965, did you get off from work, if you were working?

A. I usually get off at four and be home at five.

Mr. McDonnell: Objection, your Honor. I don't know [509] what type of shift she worked in December, but I would imagine that she had hours. I don't know what day he is referring to or anything.

The Court: Yes. I think there should be a preliminary question. I will sustain the objection.

By Mr. Eskridge:

Q. On or about December 9, 1965, do you know what your working hours were?

A. From eight until four, and I would be home at five.

Q. When you came home, did you have a usual routine?

A. Well, I would come and do the usual thing, come in and prepare supper for the family.

Q. What time did you prepare your supper for the family?

Mr. McDonnell: Objection.

The Court: Why?

Mr. McDonnell: There is no date specified.

The Court: The date, as I understand it, is December 9, 1965. Is that what you want to know about?

[510] Mr. Eskridge: Yes, sir.

The Court: What day—what time did you prepare supper on December 9, 1965, is what the lawyer wants to know.

The Witness: Yes. Well, around about between five-thirty and six o'clock.

By Mr. Eskridge:

Q. Your dinner hour was how long?

A. Oh, around about an hour.

Q. What did you do after you finished dinner, if anything?

A. Well, the children sometimes would look at, watch television downstairs, and we would go upstairs.

Q. Now, Mrs. Jackson, how many kitchens are located at 6141 Drexel?

A. Only one.

Mr. McDonnell: Objection.

The Court: I will sustain the objection.

Mr. McDonnell: I ask it be stricken from the record and the jury be instructed to disregard the answer.

The Court: Yes. I direct the jury to disregard that ques-
[511] tion. If the witness made answer, I strike the answer and direct the jury to disregard it.

By Mr. Eskridge:

Q. Would you describe the rooms that are located on the first floor of 6141 Drexel?

A. There are six rooms on the first——. On the first floor?

Q. On the first floor.

A. No, there are three rooms on the first floor and a full bath.

Q. And on the second floor?

A. There is six rooms with a half bath.

Mr. McDonnell: Objection.

I withdraw the objection, your Honor.

The Court: I will let the question and answer stand.

Mr. Eskridge: I didn't hear either one. Counsel was talking.

The Court: You heard your question.

Mr. Eskridge: Counsel was talking as the witness was talking.

The Court: Oh, well. Do you want to ask your question again? You may.

Mr. Eskridge: Let the witness answer again.

[512] By Mr. Eskridge:

Q. Would you describe the rooms on the second floor?

A. There is six rooms on the second floor.

Q. Would you describe them?

A. There is a living room and then there is a——

Mr. McDonnell: I am going to have to object, your Honor. The second floor is not relevant.

The Witness: And a half bath.

The Court: Just a minute, please, Miss Witness—Madam Witness.

What is the relevancy of the second floor?

Mr. Eskridge: I will withdraw that question.

By Mr. Eskridge:

Q. Would you describe the rooms on the first floor of 6141 Drexel?

A. As you come in out of the hallway, you step into a living room. Then there is another small room and then a [513] kitchen, and then there is a full bath.

Q. Would you describe for us the kitchen?

A. The kitchen has a pantry. It has a back door, but the back door is always locked.

Q. You spoke of a pantry. On which wall in the kitchen is the pantry?

A. It would be to my right.

Q. What wall would that be, north, east, south or west?

A. I imagine it would be to the north.

Q. Now——

Mr. McDonnell: I am sorry, Judge. I didn't hear the witness' answer.

The Court: I didn't either.

Did you get it, Miss Reporter? Please read it.

(Record read.)

By Mr. Eskridge:

Q. With your back to the back door looking to the west or looking toward Drexel, on which wall was the pantry?

A. Well, it would be on the east wall then. Well, you have to kind of excuse me because I get my directions on [514] the north, east and south mixed up. But I know it is to my right as you come in through the door.

Q. As you walk into the kitchen, the pantry would be to your right?

A. To my right.

Q. How many doors were on that pantry?

A. Just one.

Q. Was there any other closets or pantries in that kitchen?

A. No.

Mr. McDonnell: Objection.

The Court: I will strike the answer. I strike the witness' answer and direct the jury to disregard it.

By Mr. Eskridge:

Q. Was there more than one pantry?
A. Just the one.
Q. Were there any other doors in the kitchen?
A. A back door but the back door was always locked.
Q. As you lived at 6141 Drexel, did you have any pets?
A. Yes, I had a Doberman and then a small dog.
[515] Q. A what?
A. A Doberman pinscher. Then I have a small dog.

The Court: What is a Doberman pinscher? I know but there may be some on the jury who do not know what a Doberman pinscher is.
The Witness: Well, she is a Doberman pinscher dog mixed with collie.
The Court: It is a big dog?
The Witness: Large dog.

By Mr. Eskridge:

Q. Where did you keep the large dog in December of 1965?
A. Always in the house.
Q. Was there a reason why you kept the dog in the house?

Mr. McDonnell: Objection.
The Court: I will sustain the objection.

By Mr. Eskridge:

Q. Why did you keep the dog in the house?

Mr. McDonnell: Objection.
The Court: I will sustain the objection.

By Mr. Eskridge:

[516] I show you Defendant's Exhibits Nos. 1 through 15——
The Court: Exhibits for identification.
Mr. Eskridge: I meant for identification.

By Mr. Eskridge:

Q. I ask you to look at Defendant's Exhibit No. 1 and tell us what that is, this picture here?

Mr. McDonnell: Objection.

The Court: I think the witness has a—he has a right to ask the witness what it is. That doesn't mean necessarily that it will be admitted.

Mr. McDonnell: I withdraw the objection.

The Court: But I think the witness may say if she knows what it is.

By Mr. Eskridge:

Q. What is it?

A. This is the house where I lived.

Q. Speak up so the jury can hear you.

A. This is the house where I used to live.

Q. As you look at that picture, what do you see?

Mr. McDonnell: Objection.

The Court: I will sustain the objection.

By the Witness:

[517] A. I see.

Mr. Eskridge: Hold it.

The Court: You needn't answer that question.

By Mr. Eskridge:

Q. Does that picture truly portray the entrance to 6141 as it existed in December, 1965?

A. Yes, it does.

Mr. McDonnell: Objection, your Honor.

The Court: If she thinks it does, she may answer. I will overrule the objection.

Mr. Eskridge: I offer into evidence at this time Defendant's Exhibit No. 1.

The Court: Show it to counsel.

Mr. McDonnell: I object to this, your Honor.

The Court: On what ground?

Mr. McDonnell: This is a picture of a door with a number on it. It is also a picture of the defendant James White and two children involved here.

The Court: I will sustain the objection to the offer.

Mr. Eskridge: Your Honor, that is not James White on [518] that picture.

The Court: I don't know who it is but it is obvious that the witness has not identified the exhibit correctly. Anyone who has eyesight can see that.

By Mr. Eskridge:

Q. Does it truly portray the door and entrance to 6141 as it existed in December of 1965?
A. It does.

Mr. Eskridge: I offer it again, your Honor.
The Court: Show it to counsel.
Mr. McDonnell: Same objection, your Honor.
The Court: There are some human beings in that picture whose presence has not been connected with this case, as far as I know. I must therefore sustain the objection.
Mr. Eskridge: Would the court accept the photograph without the human beings shown?
The Court: I won't bargain with you. I must take an [519] exhibit as it is offered. In its present form it is clearly inadmissible. Therefore I sustain the objection.

By Mr. Eskridge:

Q. Mrs. Jackson, there are some human beings on this picture. Do you know who they are?
A. I do.
Q. Who are they?
A. My grandchildren.
Q. And there is a man in this picture holding a light. Do you know who he is?
A. I don't, no.

The Court: The answer is no, I think. Is it not?
The Witness: Yes.
Mr. McDonnell: I didn't hear the answer.

By Mr. Eskridge:

Q. Would you look at Defendant's Exhibit No. 2 for identification and I ask you does it truly portray the outside of 6141 as it existed in December of 1965?
A. It does.

Mr. Eskridge: I offer Defendant's Exhibit 2 into evidence.

[520] Mr. McDonnell: No objection.

The Court: With no objection, Defendant's Exhibit 2 for identification may be admitted into evidence as Defendant's Exhibit 2.

(Said photograph, so offered and received in evidence, was marked Defendant's Exhibit 2.)

By Mr. Eskridge:

Q. I show you Defendant's Exhibit No. 3 for identification and ask you does it truly portray the premises as they existed in December of 1965?

A. It does.

Mr. Eskridge: I offer into evidence Defendant's Exhibit No. 3.

Mr. McDonnell: I have no objection to this.

The Court: With no objection, Defendant's Exhibit 3 for identification may be admitted into evidence as Defendant's Exhibit 3.

(Said photograph, so offered and received in evidence, was marked Defendant's Exhibit 3.)

By Mr. Eskridge:

[521] Q. Would you look at Defendant's Exhibit 4, and except for the articles and the person on here, does the photograph show the premises as they existed in December of 1965?

A. It does.

Q. Do you know the human being who is shown in this photograph?

A. Yes, I do.

Q. Who is that?

A. My grandbaby.

Mr. Eskridge: I offer into evidence Defendant's Exhibit 4.

Mr. McDonnell: May I view this for a few seconds, your Honor?

The Court: Certainly.

Mr. McDonnell: Would counsel identify this again, sir? I don't remember what this was.

The Court: Read counsel's question, please, Miss Reporter, and the answer seeking to have the exhibit identified.

(Record read by the reporter.)

Mr. McDonnell: I object to it, your Honor.

[522] The Court: I sustain the objection.

Mr. Eskridge: I don't believe I understand the objection, your Honor.

The Court: See a lawyer, Mr. Eskridge. I can't—all I can do is take them as I understand them.

Mr. Eskridge: But your Honor hasn't seen the exhibit.

The Court: Well, I have heard the question. I think the question is objectionable, no matter what the exhibit is.

By Mr. Eskridge:

Q. I show you Defendant's Exhibit No. 5 for identification and ask you to look at it, and except for the articles of furniture that you see thereon, does the photograph show the premises as they existed in December of 1965?

Mr. McDonnell: Objection.

The Court: I sustain the objection.

By Mr. Eskridge:

Q. I show you Defendant's Exhibits Nos. 6 through 15 and I ask you, except for the items of personal property, furniture that you see thereon, and persons that appear [523] thereon, do the photographs truly portray the premises as they existed in December of 1965?

Mr. McDonnell: Objection, your Honor.

The Court. I will sustain the objection.

By Mr. Eskridge:

Q. Now, Mrs. Jackson, would you tell us what furniture or kitchen appliances were in the kitchen of 6141 Drexel in 1961, large appliances?

A. Large appliances, a stove and two refrigerators.

Mr. McDonnell: I object, your Honor.

The Court: I sustain the objection. I think you are going back too far, Mr. Eskridge.

Mr. Eskridge: These events took place in December, 1965, your Honor.

The Court: You said '61, didn't you?

Mr. Eskridge: I said '65.

Mr. McDonnell: I am sorry, Judge. I thought I heard '61.

The Court: What does the reporter have?

The Reporter: '61.

The Court: You have got three against you, Mr. Esk-
[524] ridge. I sustain the objection. Three to one, that's pretty good.

By Mr. Eskridge:

Q. In December, 1965, would you describe for us the large appliances that were in the kitchen?

A. Well, there was two refrigerators there and a stove.

Mr. McDonnell: Objection to this unless he specifies—Well, I will withdraw the objection, your Honor.

The Court: You may tell.

Mr. Eskridge: In the kitchen now.

By the Witness:

A. Two large refrigerators and a gas stove.

By Mr. Eskridge:

Q. Will you tell us on which of the walls were these refrigerators?

A. I had one to the right of me on the wall——

Q. To the right of you, you mean as you enter the kitchen?

A. As you entered into the kitchen on the right wall was a refrigerator and to the back wall I had the large one setting there.

[525] Q. How close was this refrigerator to the pantry as you have described it?

A. Well, the pantry door set right by the smaller refrigerator.

Q. How much distance was there from the refrigerator to the pantry door?

A. Not too much distance there.

Q. Can you measure it in inches or feet?
A. There wasn't too much inches, too many inches, because it was right close together, the door was right along here and the refrigerator set right by the door.
Q. You can't measure it in inches?
A. No. Perhaps maybe an inch or two.
Q. Would you tell us how tall this refrigerator was?
A. It is around about five feet.
Q. Which way did that pantry door open?
A. Out, it just open up, the door.
Q. As you faced that pantry door, were the hinges on your left or on your right?

Mr. McDonnell: Judge, I am going to have to object to the leading question.
The Court: Yes. I will sustain the objection.

[526] By Mr. Eskridge:

Q. As you faced that door, on which side of the door were the hinges?
A. To the right.

Mr. Eskridge: Your witness.
The Court: Is there any cross examination of this witness?
Mr. McDonnell: Yes, Judge. Just a few short questions.
The Court: Take your time. They needn't be short. Take as long as you like. I just wanted to know if there was any.
Mr. McDonnell: Yes, sir.

Cross-examination.

By Mr. McDonnell:

Q. Mrs. Jackson, do you know Agent Charles Kerstann?
A. No, I don't.
Q. Do you know any Federal Bureau of Narcotic Agents?
A. No.
Q. Have you ever talked to any Federal Bureau of Nar-
[527] cotic agent?

A. I have talked to one at one time, but to know him again, if I would see him, I wouldn't.
Q. You wouldn't know him again, is that right?
A. That is right.
Q. But you talked to him in person?
A. Yes, just one, yes.
Q. Was he a Negro man or a white man?
A. He was a white man.
Q. What did he ask you?
A. He was asking me——

Mr. Eskridge: Objection. Fix the time and place.
Mr. McDonnell: I don't know when.

By Mr. McDonnell:

Q. When did you talk to this agent?
A. I don't know the exact date.
Q. Do you know the year?
A. It was in '66.
Q. Was there snow on the ground?
A. No, there was no snow on the ground.
Q. Well, was it warm outside, ma'am?
A. Well, it was perhaps maybe in the fall.
[528] Q. Did he ask you where your husband was?
A. He did.

Mr. Eskridge: Objection.
I am sorry, I withdraw the objection.

By Mr. McDonnell:

Q. Did he ask you where your husband was?
A. Yes.
Q. Did you tell him?
A. As far as I know, I did.
Q. You didn't know where your husband was, did you?
A. No.

The Court: What did you say to the agent? What did you say to him?
The Witness: I told him that I didn't know.

The Court: You didn't know where he was?
The Witness: I didn't.

By Mr. McDonnell:

Q. How many times did you tell that same agent that?
A. Oh, I only talked to him perhaps the one time in person.
[529] Q. How many times did you talk to him on the telephone?
A. I think he called my job one time.
Q. When was that?
A. I don't know exactly the date that he called.
Q. Was it within the last two weeks?
A. Oh, I just received a telephone call here Friday, but I didn't talk to anyone.
Q. Do you know who it was that called, or did anybody tell you?
A. No, all they say was there was an agent on there, but I didn't talk to no agent.
Q. Didn't you talk to him about two weeks ago, Mrs. Jackson?
A. No, I didn't.
Q. Mrs. Jackson, who pays the rent for you at your new address?
A. I did.
Q. Is that the Blackstone address?
A. Yes.
Q. Do you know the defendant James A. White?
A. Yes, I do.
Q. You have seen him often, haven't you?
[530] A. Sure, I have.
Q. He used to come to your house, didn't he, down at 6141 South Drexel?
A. Why, sure.
Q. He is a friend of yours, isn't he?
A. Sure, he's a friend of my husband.
Q. He was a friend of your husband, too, wasn't he?
A. That's right.
Q. Now you say your husband was out of town one or two months since December 1965 until the present date, is that correct?

A. Well, I figured mostly that he was out of town because my husband—in a way, my husband he gambles a lot and then he was away from home a lot, he don't be home all the time no way.

Q. He hasn't been home for a long time, has he?

A. Not for years, he don't stay home. I don't know where he is. I don't check in behind him.

• • • • •

[582] The Court: Is there anything further in behalf of the defendant?

Mr. Eskridge: Yes, your Honor, I would like at this time to reoffer or offer again Defendant's Exhibits Nos. 1 through 15, excepting No. 3 which is admitted into evidence, for the purpose of showing——

Mr. O'Donnell: Objection.

The Court: Let him make his offer.

Mr. Eskridge: —for the purpose of showing the physical layout of the premises at 6141 Drexel Boulevard.

Mr. McDonnell: Objection.

The Court: I will let you argue in support of your reoffer. You haven't added anything to what you said at the time they were offered originally. If you have anything additional to say, I will hear you, Mr. Eskridge.

Mr. Eskridge: Now the photographs were taken last week, November 17, 1966. Mary Jackson identified the premises and she testified that this is the way the premises [583] looked in December of 1965. There are on two photographs two faces of persons—persons whose faces show on the photographs. On some of these photographs there are items of furniture. The purpose of the introduction of the evidence is to show the physical layout of the premises, the walls and the doors and the testimony is that this is the way the physical layout of the premises was in December of 1965.

The Court: In order that the record may be complete, Mr. McDonnell, you may reply.

Mr. McDonnell: I have nothing to say other than what I said yesterday, Judge.

I object to them and make the same objections as I made yesterday.

The Court: The renewed offer of Defendant's Exhibits 1 through 15, excluding Exhibit No. 3 which has been admitted into evidence, will be denied and the objections thereto sustained.

Mr. Eskridge: The defendant rests.

Defendant rests.

The Court: Is there any rebuttal?

Mr. McDonnell: The government rests in rebuttal.

Government rests.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1967—JANUARY SESSION, 1968

Nos. 16021-16022

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

v.

JAMES A. WHITE, *Defendant-Appellant.*

March 18, 1968

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

Before *Senior Circuit Judge* MAJOR, SCHNACKENBERG and CASTLE, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* James A. White, defendant, appeals from a judgment following trial by jury, adjudging him guilty of violating 26 U.S.C. § 4705 (a) and 21 U.S.C. § 174. According to his counsel's brief, defendant was sentenced to a total imprisonment of 25 years and to pay a total of $35,000 in fines.

Foremost among errors relied upon are those said to arise out of interceptions of telephone and radio transmissions and the surreptitious placing of a radio transmitter on the person of a government informer during the time that he was conversing with defendant in various locations.

The government's evidence tended to prove the following events which are typical of other episodes not set forth herein.

On December 9, 1965, Harvey Jackson, a government informer, met defendant in the kitchen of the inform-

er's home. He had concealed on his person a Kel radio transmitter. While narcotics agent Carl Jackson was concealed in a kitchen closet, he overheard a conversation between Harvey Jackson and defendant, and observed defendant give a package to Harvey. The package contained heroin. The closet had two doors which the agent left ajar so that he could see defendant and the informer, who asked the number of ounces in the package, and defendant said "one good ounce". Defendant added that he would come the next day for the money. Narcotics agent DeFauw overheard this conversation through a receiver.

The next day agent Jackson was again in the closet, from which he observed Harvey and defendant count $1,000, in official funds previously given Harvey by agent DeFauw, which defendant put in his pocket. Agent Jackson also heard defendant tell the informer he would get more "stuff" on December 24 and arrange to meet the informer at 6 p.m. the next day at Lake and Wells streets for further payment. DeFauw overheard that conversation by receiving radio transmissions from a Kel transmitter previously concealed on the informer's person.

On December 14, 1965, DeFauw placed the Kel set on the informer's person, furnished him with $360 and followed him to the residence of defendant. DeFauw overheard by radio receiver a conversation between defendant and the informer, in defendant's house, in which the money was counted and arrangements made for defendant to sell the informer another two ounces of "stuff" on December 16, for $1250, with payment due within a week and a half after delivery. Defendant said he wanted the money faster, as the "Dagoes" wanted their money sooner. Arrangements were made to meet at 6 o'clock on December 16.

On December 16, 1965, DeFauw placed the Kel set

under the informer's clothing and followed him to Clark and Wacker streets, where the informer Jackson met defendant, who entered informer's car. Agent DeFauw, following them in his car, overheard their conversation about the price and quality of heroin by radio receiver. Thereafter the informer left the car, as defendant said he had to meet "this man". Defendant drove the car to State and Randolph streets, where he picked up Sam Minerva, who rode for one-half block. From State and Randolph streets, agent Kerstann followed defendant to Lake and Wells streets, where the informer re-entered his own car. Kerstann by radio receiver overheard defendant say he had met "this man" and would leave the package on the seat. Defendant left the car. Kerstann entered the informer's car and the informer pointed to a package which contained heroin.

On December 28, 1965, DeFauw again placed the Kel set under the informer's clothes and gave him $1250. DeFauw followed agent Jackson and the informer to the latter's residence where *agent Jackson concealed himself in the closet. Defendent later arrived and asked if the informer had the money and they counted out $1250. The informer asked for more "stuff" and defendant said he could get some the next day, but he had to have the money faster as the Dago wanted fast delivery of money.*

From the closet agent Jackson overheard this conversation and observed the transfer of money. Agent DeFauw listened by radio receiver.[1]

On December 29, 1965, agents Connolly and Lewis followed defendant from his residence and into a tavern at 225 North Clark Street, where defendant talked

[1] The foregoing italicized language is taken from the statement of facts, which the evidence tended to prove, included in the brief filed by appellant.

briefly to Harry B. Williams. Connolly saw him go to a nearby Hyman's Clothing Store. Williams then left. Defendant, observed by agents, left Hyman's and drove to State and Randolph Streets where he picked up Minerva who rode for one-half block. Minerva was carrying a white shoe box. When he left the car he was carrying a black brief case. One block later defendant picked up Williams. Meanwhile the informer, equipped with a Kel transmitter, had entered said tavern. Defendant and Williams returned to the tavern. Defendant entered, Williams remaining in the car. Defendant talked to the informer and drove to Lake and Wells Streets. The informer followed. Defendant walked to the informer's car and handed him a sack. Over the radio, Meyer heard defendant ask the informer to take Williams south to Kimbark Avenue and Midway Plaisance. The informer did so. Williams was also carrying a brown paper bag. At 62nd Street and Drexel Avenue the informer gave agent DeFauw a brown paper sack. It contained heroin.

On January 5, 1966, DeFauw placed the Kel set on the informer and give him $1300. Agent Jackson concealed himself in the kitchen closet of the informer's home. He observed defendant and informer count the money. Defendant told the informer to bring the "remaining $950" to his restaurant, the Dining Room Aluminer. DeFauw heard the conversation by Kel receiver. Defendant wanted the informer to purchase large sums of heroin and to pay in advance.

On January 7, 1966, the informer was in company with agents DeFauw and Kerstann at 59th Street and Stony Island Avenue. DeFauw placed the Kel set on the informer, gave him $950 and followed him to defendant's restaurant which the informer entered. DeFauw heard over his receiver defendant tell the informer that the price of heroin was going up, and to

meet him at Lake and Wells and defendant would get three "things" for $2500.[2]

On January 8, 1966, at 6 p.m. DeFauw saw Minerva standing at State and Randolph Streets. Defendant drove up, stopped, opened the door, and Minerva approached the car. Defendent said "come on, man, give me the package, I've got to get out of here." Minerva handed a brown leather briefcase into the car and said he would pick up the money later. DeFauw placed defendant under arrest and seized the briefcase. It contained heroin.

Early in the trial, when agent Jackson testified that he listened in on a telephone conversation between the informer and defendant, objection by the defense was made on the ground that such interception was a violation of the law of Illinois, as well as the federal constitution and law, but the objection was overruled.

Also the defense objected when DeFauw testified about receiving radio transmissions from the transmitter concealed on the person of the informer. The objection was overruled. At the conclusion of the government's case, a motion by the defense to strike various radio conversations and transmissions to which the various agents testified, on the ground that they were in violation of the Illinois Eavesdropping Statute, and the state's public policy, as well as the fourth and fifth amendments to the federal constitution, was denied by the court.

1. Defendant was convicted of the possession and sale of narcotics largely as a result of the testimony of federal narcotics agents that they heard defendant make self-incriminating statements, which had been transmitted over the air by an electronic device hidden under the informer's clothes. Thereby the agents

[2] Witness DeFauw was given his report to refresh his recollection. The record shows that this report was given to defense counsel when he started a cross-examination of DeFauw.

heard conversations taking place in defendant's home, his car, his place of business, as well as in the informant's house and car. The evidence clearly shows that by these means government agents were able to, and did, testify to what they thus heard, including admissions by defendant. Informer Jackson did not testify at the trial. There is no contention that the government relied on any warrant or court order.

In *Katz* v. *United States,* 389 U.S. 347 (1967), the Supreme Court reversed a conviction obtained after a trial during which the government had introduced defendant's telephone conversation overheard by federal agents through a device they had attached to the outside of a public telephone booth. In the absence of a proper warrant or judicial order, surveillance was held to be "per se unreasonable under the fourth amendment" even though the F.B.I. investigation activities established "a strong probability" that defendant was violating federal law.

The importance of the *Katz* holding we pointed out in *United States* v. *Hagarty,* No. 15881 (January 11, 1968):

> "* * * Thus the Government first urges that Nasser's government office was not a constitutionally protected area. A similar argument with respect to the public telephone booth was rejected in *Katz,* where Mr. Justice Stewart pointed out that 'the Fourth Amendment protects people, not places,' and that what a person 'seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.' The key is whether defendant sought to exclude 'the uninvited ear.' Under this rationale, it is immaterial that the overheard conversation took place in an IRS office. The Fourth Amendment applies 'Wherever a man may be * * *.' 36 U.S. Law Week at 4081, 4083."

In the case at bar, the well-laid plans of the government agents were obviously made because the government recognized that defendant sought to exclude the "uninvited ear". For instance, why would it have hired informer Jackson, placed upon his person a hidden radio transmitter, and concealed agent Jackson in a kitchen closet of the home of the informer and thereby arranged to have a conversation between the informer Jackson and defendant overheard by agent Jackson?

By the particular means of surveillance used, it seems to us patent that the government recognized that defendant's rights under the fourth amendment, as declared in the rulings of the United States Supreme Court, had to be respected. We now apply the principles announced by the Supreme Court in its recent pronouncement in *Katz* to the situation here presented.

At 353, the court said:

> "* * * once it is recognized that the Fourth Amendment protects people—and not simply 'areas'—against unreasonable searches and seizures, it becomes clear that the reach of that Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure.
>
> "* * * The Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment. * * *"

At 357, the court added:

> "* * * Searches conducted without warrants have been held unlawful 'notwithstanding facts unquestionably showing probable cause,' * * * and that searches conducted outside the judicial proc-

> ess, without prior approval by judge or magistrate are *per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.
>
> "* * * Even electronic surveillance substantially contemporaneous with an individual's arrest could hardly be deemed an 'incident' of that arrest. Nor could the use of electronic surveillance without prior authorization be justified on grounds of 'hot pursuit.' And, of course, the very nature of electronic surveillance precludes its use pursuant to the suspect's consent.
>
> "* * * And bypassing a neutral predetermination of the *scope* of a search leaves individuals secure from Fourth Amendment violations 'only in the discretion of the police.' * * *
>
> "These considerations do not vanish when the search in question is transferred from the setting of a home, an office, or a hotel room to that of a telephone booth. Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures. The government agents here ignored 'the procedure of antecedent justification . . . that is central to the Fourth Amendment,' a procedure that we hold to be a constitutional precondition of the kind of electronic surveillance involved in this case. Because the surveillance here failed to meet that condition, and because it led to the petitioner's conviction, the judgment must be reversed."

This language, which is clear and convincing, is decisive here. In accordance with the ruling in *Katz,* we hold that the judgment from which this appeal was taken must be reversed.

2. In view of our disposition of this issue we find it unnecessary to consider other alleged trial errors cited by appellant.

Accordingly the judgment of the district court is reversed.

JUDGMENT REVERSED.

Nos. 16021 and 16022

CASTLE, *Circuit Judge,* dissenting. Unlike the situations presented in *Katz* v. *United States,* 389 U.S. 347, and *Berger* v. *New York,* 388 U.S. 41, there was no "eavesdropping" involved in the instant case. Here, one party to the conversations consented to their electronic recording and transmission. Although, like in *Hoffa* v. *United States,* 385 U.S. 293 and *Lewis* v. *United States,* 385 U.S. 206, such activity constituted a betrayal of the defendant's confidence, he did intend the informer to hear what he was told. And, that the informer breached the confidence the defendant reposed in him by recording and transmitting the conversations—or in permitting a government agent to overhear them—does not violate any constitutional right of the defendant.

In our recent decision in *United States* v. *Hagarty* (No. 15881, Opinion filed January 11, 1968) cited by the majority this Court pointed out that, "[n]either Hagarty nor Nasser had consented to the eavesdropping".

A true Copy:

Teste:

____, ____,

Clerk of the United States Court of Appeals for the Seventh Circuit.

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1968—SEPTEMBER SESSION, 1968

No. 16021-16022

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

v.

JAMES A. WHITE, *Defendant-Appellant.*

January 7, 1969

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division. On rehearing en banc.

Before CASTLE, *Chief Judge,* MAJOR, *Senior Circuit Judge,* SCHNACKENBERG,[1] HASTINGS, KILEY, SWYGERT, FAIRCHILD, CUMMINGS, and KERNER, *Circuit Judges.*

SWYGERT, *Circuit Judge.* The defendant, James A. White, was tried before a jury and convicted on seven counts of two consolidated indictments which charged him with certain narcotics violations arising under the provisions of 26 U.S.C. § 4705(a) and 21 U.S.C. § 174. The district court imposed a prison sentence of twenty-five years and fined the defendant $35,000.

A three-judge panel of this court, one judge dissenting, reversed the judgment of conviction. Subsequently, the Government's petition for a rehearing en banc was

[1] Although Judge Schnackenberg participated in the en banc rehearing, he died prior to the adoption of this opinion. As author of the prior panel decision of this court, he was of the view that the rationale of *Katz* v. *United States,* 389 U.S. 347 (1967) required reversal of White's conviction.

granted. Upon consideration of this cause by the entire court, we are of the opinion that our prior decision should be followed and that the district court's judgment of conviction must be reversed and the case remanded for a new trial.

The principal error relied upon by the defendant and the one which controls our disposition of this appeal was the admission into evidence of certain incriminating statements made by the defendant which were overheard by means of electronic eavesdropping by Government agents. This eavesdropping was accomplished by the placing of a radio kel set transmitter [2] on the person of a Government informer, Harvey Jackson, before he talked with White at various locations, including the defendant's home, automobile, and place of business, as well as the informer's home. At no time did the agents of the Federal Bureau of Narcotics secure a search warrant or court order authorizing such eavesdropping.

The Government's evidence tended to prove the following facts. On December 9, 1965, Harvey Jackson, the informer, who did not testify at trial, met defendant White in the kitchen of the informer's Chicago home. The informer had concealed on his person a kel set transmitter and had allowed a narcotics agent, Carl Jackson, to hide himself in a closet adjacent to the kitchen. While agent Jackson was so concealed, he overheard a conversation between informer Jackson and White and observed White transfer a package to the informer. This package, according to subsequent tests, contained heroin. From inside the closet where he could see White and the informer through the slightly open doors, agent Jackson overheard the informer inquire how many ounces there were in the package; the defendant responded, "one good ounce." After asserting

[2] A radio kel set is a small transistorized device which transmits voices or sound which can be picked up on receiving units.

that he would return the following day for payment, the defendant left the informer's home. Narcotics agent Robert DeFauw who was situated in an automobile outside the informer's home overheard the entire conversation on a radio which received transmissions from the informer's kel set.

On December 10, 1965 the informer called White from a public telephone and arranged an appointment for that day at the informer's home so that payment for a prior narcotics transfer could be made. Agent Jackson, with the informer's permission, overheard this conversation on the same telephone receiver used by the informer. Agent Jackson and the informer then went to the latter's home, where agent Jackson again concealed himself in the closet and observed the informer and White count $1,000 in official funds, previously given the informer by agent DeFauw. White put the money in his pocket, told the informer that he would get more "stuff" on December 14, and requested the informer to meet him at 6 p.m. the next day on a specified Chicago street corner for further payment. Again agent DeFauw overheard the entire conversation in his car outside the informer's home by receiving radio transmissions from the kel set which had been previously concealed on the informer's person.

On December 14, 1965 agent DeFauw placed a kel set on the informer's body, furnished him with $360, and followed him to the defendant's residence. A conversation between the defendant and the informer which took place inside the defendant's home was overheard on a radio receiver by agent DeFauw at his position outside White's home. During the course of this monitored conversation, money was counted and arrangements were made for the defendant to sell an additional two ounces of "stuff" on December 16 for $1,250, with payment due within a week and a half after delivery. The de-

fendant requested faster payment since his suppliers wanted their money sooner and arrangements were made to meet again at 6 p.m. on December 16.

On December 16, 1965 agent DeFauw placed a kel set under the informer's clothing and followed him to a Chicago intersection where the informer met White who entered the informer's car. While White and the informer drove around the city for two hours, agent DeFauw, following them in his car, overheard by radio receiver their conversation concerning the price and quality of heroin. Thereafter the informer left the car because White said he had to meet "this man." White drove the car a few blocks to another Chicago intersection where he picked up Sam Minerva, a supplier of narcotics. At this point agent William Kerstann who was trailing White, observed Minerva emerge from the car after riding a short distance. Kerstann followed White a couple of blocks to a street corner where the informer re-entered the car. By radio receiver, Kerstann overheard the defendant say that he had met a certain man and received a package which he would leave on the seat of the informer's car. Then White said he had to leave the informer in order to meet another man. After White's departure, agent Kerstann entered the car and seized the package containing heroin.

On December 28, 1965 the informer was given $1,250 and a kel set was placed under his clothes. While followed by agent DeFauw, agent Jackson and the informer drove to the latter's residence, where agent Jackson resumed his usual surveillance position in the kitchen closet. Jackson saw the defendant enter the kitchen, sit down at a table, and join the informer in counting the $1,250. When the informer requested more heroin. White advised him that more would be forthcoming the following day, but that payment would have to be made

more quickly because the supplier "wanted his money." Agent Jackson overheard the conversation from the closet and agent DeFauw listened on a radio receiver from his position in a car outside the informer's residence.

On the following day, agents David Connolly and Arthur Lewis followed White from his residence to a tavern where he talked briefly to Harry D. Williams, another narcotics peddler, and then departed. After stopping at a clothing store, White drove to a Chicago intersection where he picked up Minerva who accompanied White for one-half block. Although Minerva was carrying a white shoe box when he entered White's car, he left with a black briefcase. White drove a block, picked up Williams, and returned to the tavern where they had talked earlier the same day. Meanwhile the informer, equipped with a kel set, had entered the same tavern. While Williams remained in the car, White went into the tavern and talked with the informer. They left and drove a few blocks in separate cars to a point where the defendant stopped, got out of his car, walked to the informer's car, and handed him a sack. Agent Vernon Meyer, who had been surveilling the informer's activities, heard over a radio in his car the defendant ask the informer to take Williams to the city's south side. Williams, also carrying a brown paper sack, entered the informer's car and drove with him to their appointed destination. After discharging Williams, the informer met agent DeFauw and gave him the paper sack which contained heroin.

On January 5, 1966 agent DeFauw placed a kel set on the informer and gave him $1,300. From the closet in the informer's kitchen where he was secreted, agent Jackson observed the defendant and the informer count the money. The defendant told the informer to bring the "remaining $950" to the Dining Room Aluminer, a restaurant operated by White. White also requested

that the informer purchase a large amount of heroin and pay in advance. The entire conversation was heard by agent DeFauw over the radio in his car.

Two days later, the informer was given $950 and had a kel set placed on his person by agent DeFauw. The agent followed the informer to White's Dining Room Aluminer which the informant entered. From his automobile, agent DeFauw heard over his radio the defendant tell the informer that the price of heroin was going up and that he should meet White at a Chicago intersection where a $2,500 heroin delivery would be made.

On January 8, 1966 agent DeFauw saw Minerva standing at a city bus stop. The defendant drove up, stopped, opened the door, and Minera approached the car. White said, "Come on, man, give me the package, I've got to get out of here." Minerva handed a brown leather briefcase into the car and said that he would pick up the money later. Agent DeFauw placed the defendant White under arrest and seized the briefcase containing heroin.

The Government's evidence was based largely upon oral testimony by the narcotics agents that they overheard incriminating statements made by White to the secret informer, Harvey Jackson, and transmitted by the kel set device. As we have heretofore stated, these transmitted conversations occurred in the defendant's home, automobile and place of business as well as in the informer's automobile and home.[3] The defense objected when agent DeFauw and other agents testified concerning White's incriminating statements transmitted from

[3] There can be no doubt that these may be constitutionally protected areas. "Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures." *United States.* v. *Katz*, 389 U.S. at 359. *See also, United States* v. *Hagarty*, 388 F. 2d 713 (7th Cir. 1968); *Lanza* v. *New York*, 370 U.S. 139 (1962) (jail visiting room not a protected area). It is not the area alone, but the relationship between the area and the person protected that is critical.

the kel set concealed on the informer's body. The objection was overruled. A motion by the defense made at the conclusion of the Government's case to strike the conversations to which the various agents testified on the ground that they were in violation of the fourth and fifth amendments was denied by the court.

The central issue presented is whether defendant White's fourth amendment rights, protecting him against governmental intrusion by unreasonable search and seizure, were infringed when the Government narcotics agents electronically intercepted his private conversations.

To decide the constitutionality of the Government's surreptitious overhearing of White's conversations, we apply the criteria recently set forth in *Katz* v. *United States,* 389 U.S. 347 (1967). The facts of *Katz* were that Federal Bureau of Investigation agents, having probable cause and acting in a carefully controlled manner but without prior judicial approval, placed an electronic listening and recording device outside a public telephone booth and intercepted telephone conversations which the defendant made from the booth to others without the knowledge or consent of the defendant or any of the other parties to the conversations. In reversing the defendant's conviction, the Supreme Court held that the admission of these conversations as evidence, covertly obtained by electronic surveillance, was improper because they were seized in violation of the defendant's fourth amendment rights. Essentially, the Supreme Court's determination was grounded on the lack of prior judicial authorization, because no search warrant had been obtained, and the fact that under the circumstances antecedent justification before a magistrate was essential to insure the defendant's fourth amendment guarantees.

The *Katz* opinion stated that the fourth amendment is designed to preserve privacy against the "uninvited

ear" of governmental intrusion and must be applied to "protect people, not places."[4] The trespass doctrine, suggested earlier in *Olmstead* v. *United States,* 277 U.S. 438 (1928), and *Goldman* v. *United States,* 316 U.S. 129 (1942), and which provided the basis for prior Supreme Court decisions in this area, such as *On Lee* v. *United States,* 343 U.S. 747 (1952), was squarely discarded by the Court in *Katz:* "[T]he underpinnings of *Olmstead* and *Goldman* have been so eroded by our subsequent decisions that the 'trespass' doctrine there enunciated can no longer be regarded as controlling." 389 U.S. at 353.

The *Katz* case further indicates that conversations are within the scope of the fourth amendment's protection: "[T]he Fourth Amendment governs not only the seizure of tangible items, but extends as well to the recording of oral statements, overheard without any 'technical trespass . . . under local property law.' *Silverman* v. *United States,* 365 U.S. 505, 511." 389 U.S. at 353. Consequently, White's covertly overheard statements are within the scope of the fourth amendment's guarantees.

The Government urges us to disregard the *Katz* rationale because of certain factual differences. Although we recognize these factual differences, we believe them to be without legal significance. It is true that the *Katz* case involved governmental interception of a conversation without the consent or knowledge of either party, whereas in the present case one party to the monitored conversation, informer Jackson, was cognizant of the Government's eavesdropping activities.

It is our opinion, however, that the surreptitious

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[4] The relationship between eavesdropping and the right to privacy has been the source of continuing judicial concern. Wiretapping and other forms of eavesdropping are recognized by even their most zealous advocates as encroachments on a man's right to privacy, characterized by Justice Brandeis as "the most comprehensive of rights and the right most valued by civilized men." *Olmstead* v. *United States,* 277 U.S. 438, 478 (1928) (dissenting opinion).

placing of the kel set on informer Jackson was for all conceptual purposes the same as the surreptitious wiring of the telephone booth in *Katz*. Each act was part of a "bugging" technique by which a conversation was transmitted to an "uninvited ear"—government agents. The crucial fact in each case is that the respective speakers did not consent to the overhearing of their statements and that the conversations were overheard by third persons uninvited by the speaker.

To claim, as the Government does, that one party can waive the fourth amendment rights of another is the same thing as saying that *Katz* would have been decided differently if the recipient of the intercepted phone call had consented to the Government's bugging. We are unable to believe that such a meaningless form of consent would have rendered the defendant's overheard statements any more admissible in *Katz*. Since we think no distinction of constitutional significance can be drawn between the third party overhearing presented in *Katz* and the consensual monitoring here, the fact of listener consent is without decisional significance and cannot operate as a waiver of any speaker's fourth amendment rights.[5]

The content of the defendant's private conversations, intercepted by the Government's clandestine activity and without prior judicial control, must be held as per se inadmissible evidence if the language of *Katz* is literally applied:

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[5] In holding that the rationale of *Katz* applies regardless of whether one party to a private conversation consents to the Government's interception of the conversation, we do not purport to make any determination regarding the voluntariness of informer Jackson's participation in the agents' scheme. Since it is our view that a listener's consent is irrelevant, it is difficult to see how informer Jackson's conduct, whether the product of coercion or consent, could have constituted a waiver of the defendant's constitutional rights. Only his own consent could have created such a waiver. The rationale of *Katz* permits no other conclusion.

Searches conducted without warrants have been held unlawful "notwithstanding facts questionably showing probable cause," *Agnello* v. *United States,* 269 U.S. 20, 33, for the Constitution required "that the deliberate, impartial judgment of a judicial officer . . . be interposed between the citizen and the police. . . ." *Wong Sun* v. *United States,* 371 U.S. 471, 481-82. "Over and again this Court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes," *United States* v. *Jeffers,* 342 U.S. 48, 51, and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment —subject only to a few specifically established and well-delineated exceptions.[6] *Katz* v. *United States,* 389 U.S. at 357 [footnotes omitted].

It is especially important that the Court in *Katz* referred with approval to *Osborn* v. *United States,* 385 U.S. 323 (1966), where the essentiality of prior authorization was emphasized. In *Osborn* a paid informer recorded conversations between himself and the defendant in order to corroborate his sworn statement that the defendant was attempting to employ him to bribe a prospective juror. *Osborn* teaches what the agents in

[6] These exceptions permit a warrantless search whenever the burden of obtaining a warrant would be likely to frustrate the purpose of the search. *See, e.g., Camara* v. *Municipal Court,* 387 U.S. 523, 533 (1967). Thus, the Court has allowed a warrantless search of an automobile on the ground that it might leave the jurisdiction before a warrant could be obtained, *Carroll* v. *United States,* 267 U.S. 132 (1925), and has approved taking a blood sample without first securing a warrant as necessary to prevent dissipation of the blood's alcoholic content, *Schmerber* v. *California,* 384 U.S. 757 (1966). In the present case, the Government did not argue that the evidence would have been lost due to the delay of obtaining a warrant, nor do the facts suggest that such an argument could have been made.

the instant case should have done, but failed to do, namely, obtain a warrant authorizing the use of electronic surveillance devices.

The exceptions to the warrant rule of *Osborn* and *Katz* which are explicitly mentioned in the *Katz* opinion do not have application to the governmental eavesdropping endeavors presented by the present case. In fact, our conclusion that the agents' testimony relating to the transmitted statements of the defendant which they overheard is inadmissible is strengthened by the Supreme Court's unequivocal language which clearly precludes the existence of any fourth amendment exception for consensual surveillance. "And, of course, the very nature of electronic surveillance *precludes* its use pursuant to the suspect's consent." *Katz* v. *United States,* 389 U.S. at 358 (emphasis added). Thus the literal language of *Katz* as applied to the case before us would require reversal since White did not consent to the eavesdropping and no antecedent justification was sought.

Our view as to the result which must be reached upon the application of the *Katz* principles is reinforced by our understanding of the fourth amendment. That amendment's search and seizure protection is lost to a person when his actions as a matter of law can be said to constitute a waiver of his right. Since the fourth amendment protects a speaker's right to privacy, this right would be illusory if it could be waived by other individuals.

The decisions provide a catalogue of instances where a speaker's behavior is such that a waiver of his fourth amendment rights has occurred as a matter of law. For example, *Hoffa* v. *United States,* 385 U.S. 293 (1966), is based on the unarticulated rationale that when one speaks he takes the risk that his intended listener may subsequently testify as to the contents of the conversa-

tion. Such a risk, although perhaps the product of a "misplaced confidence," is reasonably foreseeable, and thus objection thereto is waived. Another risk taken by a speaker is outlined in *Rathbun* v. *United States,* 355 U.S. 107 (1957).[7] In that case, the Court determined that on a constructive knowledge theory it is not unreasonable to say that one who places a telephone call takes the risk that an extension on the other end of the line may be picked up by an uninvited third party with or without the complicity of the intended listener.[8] The focal point in determining the existence of a speaker's fourth amendment rights must be whether his activity was directed at keeping his statements private and what were the risks of overhearing which he should have justifiably anticipated at the time of his statements.[9] In deciding whether the defendant waived his fourth

[7] To the extent that *Rathbun* is based on the one party consent theory, it is inconsistent with the broad ruling of *Katz.* We view it from the speaker risk point of view for purposes of our present discussion.

[8] It is important for courts deciding fourth amendment questions to take into account the relationship between that amendment and the first amendment's penumbral protection of privacy. It is this nexus which makes a speaker risk analysis appropriate. If the law places great risks of governmental intrusion on an individual's activity, especially his private speech, he will be inhibited in the free exercise of his first amendment rights, that is, the broader the scope of governmental searches and seizures which are determined to be consistent with the fourth amendment, the narrower the ambit of protected first amendment activity will become. This important interrelationship is detailed in GREENAWALT, *The Consent Problem in Wiretapping & Eavesdropping: Surreptitious Monitoring with the Consent of a Participant in a Conversation,* 68 COLUM. L. REV. 189 (1968).

[9] This court, speaking through Judge Hastings, recently recognized a substantially similar inquiry: "One who intends a conversation or transaction to be private and takes reasonable steps to keep it private is protected from government intrusion unauthorized by warrant or well-defined special circumstances." *United States* v. *Haden,* 397 F.2d 460, 465 (7th Cir. 1968).

amendment rights, we are mindful of the Supreme Court's admonition in *Johnson* v. *Zerbst,* 304 U.S. 458, 464 (1938): "[C]ourts [should] indulge every reasonable presumption against waiver of fundamental constitutional rights and . . . we 'do not presume acquiescence in the loss of fundamental rights.' "

Nonetheless, the Government, relying upon the following statement from *Katz,* attempts to distinguish that opinion from the facts before us, "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *United States* v. *Katz,* 389 U.S. at 351. To ascertain the applicability of that formulation, we must address ourselves to the questions of whether the Government's activities violated a justifiable expectation of privacy which the defendant held and whether he acted in such a manner as to knowingly expose his statements and thus waive his rights.[10] A realistic appraisal of the defendant's conduct permits no other conclusion than that he justifiably expected his conversations to be private.[11] The well-laid plans of the Govern-

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[10] Other tests have been suggested to determine the precise contours of the fourth amendment's protection. As articulated in his concurring opinion in *Katz,* Justice Harlan sets up a twofold requirement: "[f]irst that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.' " 389 U.S. at 361 (concurring opinion).

[11] The justifiable expectation of privacy is a conclusion which must be drawn only after an examination of all the circumstances surrounding the context in which the asserted right arises; one of these circumstances is the place which the individual has attempted to appropriate to his personal use in asserting his claim to privacy. This was illustrated in another search and seizure case decided after *Katz, Mancusi* v. *DeForte,* 392 U.S. 364 (1968). In deciding that a union official has standing to object to seizure of union records from an office he shares with other officials, the Court phrased the relevant question as whether the defendant while occupying such a place could justifiably expect freedom from governmental intrusion.

ment agents were made because they recognized that the defendant sought to exclude their uninvited ears. Why else would they have hired informer Jackson, placed upon his person a hidden radio transmitter, and concealed agent Jackson in the informer's kitchen closet to overhear the defendant's conversation? Additionally, the locations chosen for the private conversations indicate that the defendant took reasonable steps to protect against governmental intrusion. In such a situation we can only conclude that the defendant's fourth amendment rights were violated,[12] that the failure to suppress the evidence of his statement was error, and that their admission at trial constituted ground for reversal.[13]

Although the Government has cited numerous cases to support its position, they are inapposite. Unlike the case before us, *Hoffa* v. *United States,* 385 U.S. 293 (1966), and *Lewis* v. *United States,* 385 U.S. 206 (1966), presented situations where there was no electronic interception or transmission of the defendants' statements. They stand for the proposition that an in-

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[12] According to the language in *Katz*, "[T]he Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied . . . and thus constituted a "search and seizure' within the meaning of the Fourth Amendment." *Id.* at 353. The assessment made by the Court regarding *Katz* is equally applicable to the defendant White: "[He] surely is entitled to assume that the words he utters . . . will not be broadcast to the world." *Id.* at 352.

[13] Other courts have reached an identical conclusion in light of the *Katz* decision. *E.g., Doty* v. *United States* F.2d , 3 Crim.L.R. 2220 (10th Cir. 1968), decision on rehearing pending; *United States* v. *Jones,* F.Supp. , 3 Crim.L.R. 3007 (D.D.C. 1968). *Contra, Dancy* v. *United States,* 390 F.2d 370 (5th Cir. 1968) (Fahy, J., sitting by designation from the D.C. Cir., dissenting). Other circuits which have faced the issue here presented such as the Second Circuit in *United States* v. *Jackson,* 390 F.2d 317 (2d Cir. 1968), and the Ninth Circuit in *Jack* v. *United States,* 387 F.2d 471 (9th Cir. 1967), voiced their opinion before the Supreme Court's adjudication of *Katz*.

former is a competent witness as to conversations and dealings with a defendant. Looked at from the viewpoint of the speaker, these cases demonstrate that a person confiding in another takes the risk that the confidence may be misplaced and that the confidant may memorize or record the statements and repeat them at trial. That risk and the applicable rule provide no guidance for the present problem.

Likewise, *Rathbun* v. *United States,* 355 U.S. 107 (1957), a consensual overhearing case not decided on a constitutional basis, involved the assumption of a risk by the defendant that operated as a waiver of his fourth amendment protection. The holdings of *Rathbun* and this court's decision in *Williams* v. *United States,* 311 F.2d 721 (7th Cir.), *cert. denied,* 374 U.S. 812 (1963), do not settle the question before us and are of no benefit to the Government.

Lopez v. *United States,* 373 U.S. 427 (1963), has factual features which distinguish it from the instant case. In *Lopez* a concealed device on the person of an undercover agent recorded a conversation between him and the defendant. Admission in evidence of the recording itself to corroborate the undercover agent's testimony was upheld in the circumstances of the case. The important distinction between *Lopez* and this case is that here the informer, Harvey Jackson, was not produced as a witness whereas in *Lopez* the Government agent was a witness. *Lopez* goes no further than to hold that where an informer testifies as to conversations with a defendant, a recording of such conversations is admissible for the limited purpose of corroboration.

In *Osborn* v. *United States,* 385 U.S. 323 (1966), a Government informer recorded conversations between himself and the defendent for the purpose of corroborating his allegations that the defendant was endeavoring to employ him to bribe a prospective juror. Al-

though the case involved monitoring with the consent of the informer, there was proper judicial approval of the reasonableness of the recording.

The Goverment's principal reliance is placed on the decision in *On Lee* v. *United States,* 343 U.S. 747 (1952). There an electronic device which transmitted two conversations between an agent and the defendant, one of which took place in the defendant's laundry and the other a few days later on the street, was concealed on the body of an undercover agent. On each occasion the transmitted conversation was heard by a government agent stationed nearby with a receiving device. The agent's testimony as to what he had heard was held admissible over the defendant's contention that the informer was a trespasser and that hence the seizure was proscribed by the fourth amendment. On its facts, *On Lee* is directly in point and would control the disposition of this case if *Katz* had not supervened and if the Supreme Court had not on other occasions completely eroded the decisional basis of *On Lee.*

The recent treatment of the *On Lee* doctrine indicates that it now stands on unfirm ground. Not only did four members of the Supreme Court disagree with *On Lee* when it was decided, but also in *Lopez,* the majority pointed out that *On Lee* was of no help to the defendant. The Chief Justice, in his concurring opinion, was careful to make plain that he could not join in any implication that the majority was accepting the continued vitality of *On Lee.*[14]

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[14] Chief Justice Warren said: "Since I agree with Mr. Justice Brennan that *On Lee* was wrongly decided and should not be revitalized, but base my views on grounds different from those stated in the dissent, I have chosen to concur specially." *United States* v. *Lopez,* 373 U.S. at 441.

Justice Brennan, joined by Justices Douglas and Goldberg, stated in dissent: "The Court's refusal to accord more than passing mention in its opinion to the only decision of this Court—*On Lee*

The most lethal blow to *On Lee* was dealt by the Court's overruling in *Katz* of the *Goldman* and *Olmstead* bulwark which had provided the conceptual basis for *On Lee*.[15] The overruling of these cases combined with the reasoning of *Katz* leaves no scope for *On Lee's* teaching. For these reasons, *On Lee* cannot be the foundation of our decision.

On the basis of the constitutional principles set forth in *Katz* and our understanding of the protection which the fourth amendment was drawn to provide, we are of the opinion that the surreptitious monitoring of the defendant's conversations was a naked violation of his rights and that the resultant seizure of his statements was not made in conformity with the provisions of that amendment.[16]

In view of our disposition of this issue we find it unnecessary to consider the other alleged errors presented by the defendant.

Accordingly, we adhere to our previous decision reversing the judgment of the district court and remand the case for a new trial.

CASTLE, *Chief Judge*, with whom Circuit Judges Hastings and Fairchild join, dissenting. I find myself unable to agree that the decisional basis of *On Lee* has

—factually analogous to the case at bar suggests very strongly that some of my colleagues who have joined the Court's opinion today agree with us that *On Lee* should be considered a dead letter. For the Court, rather than follow *On Lee*, has adopted the substance of the Government's attempted distinction between *On Lee* and the instant case." *Id.* at 447.

[15] For further discussion see p. 7, *supra*.

[16] The present decision overrules our prior determinations pertaining to the admissibility of statements seized in situations similar to those presented here. *E.g.*, *United States* v. *Pullings*, 321 F.2d 287, 295 (7th Cir. 1963), and *United States* v. *Vittoria*, 284 F.2d 451, 455 (7th Cir. 1960), wherein we held that by consent an individual can waive another party's fourth amendment rights.

been eroded to the extent that the electronic monitoring of the defendant's conversations with the informer, with the latter's consent, must now be regarded as constituting an unreasonable search and seizure in violation of the Fourth Amendment. The majority opinion recognizes that on its facts *On Lee* is directly in point and would control the disposition of this case unless its teaching is to be completely rejected. I join with Justice White in regarding *On Lee* as "undisturbed" by the decision in *Katz*. (Concurring opinion, *Katz* v. *United States*, 389 U.S. 347, 363, n. (1967)).

Although a substantial part of the rationale of *On Lee* has arguably been discredited in later cases[1], the case was cited with approval in *Lopez* v. *United States*, 373 U. S. 427, 438 (1963) and in *Katz* v. *United States*, 389 U. S. 347, 363 (1967) (Concurring opinion of Justice White).

The Government's use of conversations obtained by the deception of a Government agent has been dealt with in numerous cases, and the validity of such conduct has consistently been upheld where the conversation was freely entered into by the defendant.

Thus, in *Lopez* v. *United States*, 373 U. S. 427, 439 (1963), the Supreme Court held that the recording made by a Government agent of a bribe offer was properly admitted into evidence. Since the agent was entitled to, and did, testify about the conversation he had with the defendant, there was no "seizure" of anything without the defendant's knowledge and consent when he voluntarily participated in the incriminating conversation. The recording device, therefore, was used

[1] *E.g.*, *Warden* v. *Hayden*, 387 U. S. 294, 304 (1967): "The premise that property interests control the right of the Government to search and seize has been discredited." *Cf. Katz* v. *United States*, 389 U.S. 347, 353 (1967), *Silverman* v. *United States*, 365 U.S. 505 (1961); *Wong Sun* v. *United States*, 371 U. S. 471 (1963).

only to obtain the most reliable evidence possible of a conversation which the Government rightfully heard through its agent. Moreover, the case involved "no eavesdropping whatever in any proper sense of that term. The Government did not use an electronic device to listen in on conversations it could not otherwise have heard." 373 U. S. at 439. It followed that there was no search and seizure which violated the Fourth Amendment.

Even more recently decided were *Lewis* v. *United States,* 385 U. S. 206 (1966), and *Hoffa* v. *United States,* 385 U. S. 293 (1966). In *Lewis,* the Court held that where the defendant invited a person, who was a secret Government agent, into his house for the purpose of selling narcotics to the agent, the subsequent admission into evidence of the narcotic bought by the agent and the conversations which had taken place between the parties did not violate the Fourth Amendment since the agent took nothing which the defendant had not voluntarily given to him, and the deception did not nullify the defendant's consent.

In *Hoffa,* the Court held that no violation of the Fourth Amendment occurred when an acquaintance of defendant, whom defendant had invited to his hotel suite, heard conversations directed to him or to others in his presence. Unknown to defendant the acquaintance was a paid Government informer. Holding that this was merely a case of "misplaced confidence" rather than unreasonable search and seizure, the Court noted that "[n]either this Court nor any member of it has ever expressed the view that the Fourth Amendment protects a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it." (Citing Lopez). 385 U. S. at 302.

Taken together, these cases establish the principle that one who voluntarily enters into a conversation with

another takes the risk that such person may memorize, record, or (including *On Lee*) transmit the conversation.[2] It seems reasonable to conclude that if the recording in *Lopez* was not "eavesdroping," because it was done with the consent of one of the participants, and therefore not an unreasonable search and seizure, then a transmission is likewise not prohibited by the Fourth Amendment. Absent statutory prohibition, there is no legal significance in the fact that in one case, the transmission, a person is simultaneously overhearing the conversation with the consent of one of the participants while in the other a machine is employed to record such conversation for future disclosure. Therefore, I perceive no distinction which would require different treatment for purposes of the Fourth Amendment.

I do not read the recent decision in *Katz* v. *United States,* 389 U. S. 347 (1967) as changing the law as expressed in the cases just discussed. Nor do I view the decision in *Katz* as extending to the degree ascribed to it by the majority. In *Katz,* the Court reversed a conviction based upon one side of a telephone conversation overheard by Government agents by means of an electronic eavesdropping device installed on the public telephone booth in which defendant placed his call. The Court held that:

> "... the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not subject to Fourth Amendment protection. See *Lewis* v. *United States,* 385 U. S. 206, 210; *United States* v. *Lee,* 274 U. S. 559, 563. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. . . ." 389 U. S. at 351-352.

[2] It is important to note that, as in the instant case, there was no search warrant or court order in *Lopez, Lewis,* or *Hoffa.*

The use of this language by the Supreme Court illustrates the distinction between *Katz* and the instant case, and demonstrates the present state of the law. In *Katz*, the Government surreptitiously overheard one side of a conversation without the consent of either party thereto, and after the defendant had taken reasonable steps to protect his privacy. The Court, therefore, held that "[t]he Government's activities in electronically listening to and recording the petitioner's words violated the privacy upon which he justifiably relied while using the telephone booth and thus constituted a 'search and seizure' within the meaning of the Fourth Amendment." 389 U. S. at 353.

Unlike *Katz*, the instant case involves not a search and seizure, but a misplaced confidence—not surreptitious eavesdropping, but merely the obtaining of evidence of a conversation in which the Government, through its informer, was a participant. See *Lopez* v. *United States*, 373 U. S. 427, 439 (1963). Had the person on the other end of the telephone line in *Katz* allowed a Government agent to listen in on the conversation, there would have been no constitutional violation. *Rathbun* v. *United States*, 355 U. S. 107, 111 (1957); *United States* v. *Williams*, 311 F. 2d 721, 725 (7th Cir. 1963), cert. den. 374 U. S. 812 (1963). Thus, once the conversation is deprived of its private character through the consent of one of the parties thereto, the Fourth Amendment, not having prohibited the initial exposure, does not prohibit the introduction into evidence of the conversation as transmitted or recorded. As stated in *Katz*, itself, "what a person knowingly exposes to the public, *even in his own home or office*, is not subject to Fourth Amendment protection. See *Lewis* v. *United States*, 385 U. S. 206, 210. . . ." 389 U. S. at 351 (emphasis added).

Thus, any expectation, by defendant, of privacy, when the person to whom the defendant is speaking consents to exposure of the conversation is not reasonable and therefore not protected by the Fourth Amendment. This Court recently pointed out the distinction between electronic eavesdropping and misplaced confidence in *United States* v. *Haden,* 397 F. 2d 460 (7th Cir. 1968), where we held (at page 465):

> "One who intends a conversation or transaction to be private and takes reasonable steps to keep it private is protected from Government intrusion unauthorized by warrant or well-defined special circumstances. Cf. *Katz* v. *United States,* 389 U. S. 347 (1967). But he is not protected from the consequences of error, if he places trust in the silence, duplicity or complicity of a Government agent or informer."

Therefore, the application of *Katz* to the instant case is its recognition of the principle that:

> "When one man speaks to another he takes all the risks ordinarily inherent in so doing, including the risk that the man to whom he speaks will make public what he has heard. The Fourth Amendment does not protect against unreliable (or law-abiding) associates. *Hoffa* v. *United States, supra.* It is but a logical and reasonable extension of this principle that a man take the risk that his hearer, free to memorize what he hears for later verbatim repetition, is instead recording it or transmitting it to another. The present case [*Katz*] deals with an entirely different situation, for as the Court emphasizes, the petitioner "sought to exclude . . . the uninvited ear," and spoke under circumstances in which a reasonable person would assume that unin-

> vited ears were not listening." *Katz* v. *United States,* 389 U. S. 347, 363 n. (1967) (Concurring opinion of Justice White) (Emphasis supplied).[3]

In concluding that the Fourth Amendment does not prohibit the transmission of a conversation to a Government agent by a participant therein, where the defendant is a voluntary party to the conversation, I am mindful of the fact that, as recognized in numerous Supreme Court decisions,[4] as well as our own,[5] the strategem of deception is often the only way the Government can obtain information relating to a crime. To prohibit the use of such deceit might, in certain areas, prevent effective law enforcement. The Supreme Court in *Lewis* v. *United States,* 385 U. S. 206, at 210-211 (1966), cited with approval a quotation from the Model Penal Code § 2.10, comment, p. 16 (Tent. Draft No. 9, 1959):

> "Particularly, in the enforcement of vice, liquor or narcotics laws, it is all but impossible to obtain evidence for prosecution save by the use of decoys. There are rarely complaining witnesses. The participants in the crime enjoy themselves. Misrepresentation by a police officer or agent concerning the identity of the purchaser of illegal narcotics is a practical necessity. . . . Therefore, the law must attempt to distinguish between those deceits and persuasions which are permissible and those which are not."

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[3] Justice White, in the same footnote, also cited *Hoffa, Lopez* and *On Lee* as cases "which are undisturbed by today's decision."

[4] *E.g., Lewis* v. *United States,* 385 U.S. 206, 208-211 (1966); *Sorrells* v. *United States,* 287 U. S. 435, 411-442 (1932); *Andrews* v. *United States,* 162 U. S. 429, 423 ((1896).

[5] *E.g., United States* v. *Haden,* 397 F.2d 460 (7th Cir. 1968); *United States* v. *Lauchli,* 371 F.2d 303 (7th Cir. 1966); See also *Cellino* v. *United States,* 276 F.2d 941 (9th Cir. 1960).

For the reasons stated above, I am of the view that the method of deception employed in the instant case is constitutionally permissible and is not so fundamentally unfair as to require reversal in the exercise of our supervisory power over the district court. Rather than being of an indiscriminate nature, as in *Berger* v. *New York,* 388 U. S. 41 (1967), *Katz* v. *United States,* 389 U. S. 347 (1967), and *Silverman* v. *United States,* 365 U. S. 505 (1961), the electronic transmission in the instant case included only those words which defendant voluntarily spoke to the informer and intended that he hear, thus knowingly taking the risk that the informer would disclose them to the Government.

Such view does not, therefore, approve or permit violation of the "requirements of the Fourth Amendment in the name of law enforcement," as *Berger* forbids (388 U. S. at 62), but rests on a conclusion compelled by an analysis of those decisions in which the Supreme Court has to date considered the subject matter.

HASTINGS, *Circuit Judge,* dissenting. I join Chief Judge Castle in his able dissent in this case. I wish to add a few brief comments of my own.

I was moved to vote for a rehearing *en banc* in the instant *White* case because I thought the majority opinion, written by the late Judge Schnackenberg, mistakenly relied upon *Katz* v. *United States,* 389 U. S. 347 (1967), as its authority for a reversal of the judgment of conviction. I thought at that time, as I do now, that the factual situation in *Katz* is so unlike the present case before us as to furnish no controlling precedent.

The original panel opinion was handed down in slip opinion form on March 18, 1968. Judges Major and Schnackenberg were in the majority, with Chief Judge Castle in dissent. It is conceded in the present *en banc*

majority opinion that the author of the prior panel majority decision was of the view that the rationale of *Katz* required a reversal of White's conviction. Yet that is precisely the same position taken by Judge Swygert in the instant majority opinion. Why was it necessary to indulge in this exercise in semantics to reach the same result on the same cited authority?

I concede that Judge Swygert's majority opinion is a sophisticated constitutional essay in contrast to the short direct approach taken by Judge Schnackenberg. But therein may lie a present danger. With deference, I suggest that the present majority has undertaken a broad construction of *Katz* that was not taken by the Supreme Court. For a stimulating treatment of the subject I recommend the reading of *Katz* v. *United States*: The Limits of The Fourth Amendment, by Edmund W. Kitch, Associate Professor of Law, The University of Chicago.[1]

My final comment is directed to the rather summary reversal of *On Lee* v. *United States,* 343 U. S. 747 (1952), by the majority here. Chief Judge Castle has ably covered this in his dissent. My fundamental objection to the majority mistreatment of *On Lee* is that it has no authority to do what it did. I have long held the rather old fashioned view that only the Supreme Court could set aside its holdings. By the process of taking a head count and making a guess on what the Court may do at some future time, the majority holds: "On its facts, *On Lee* is directly in point and would control the disposition of this case if *Katz* had not supervened and if the Supreme Court had not on other occasions completely eroded the decisional basis of *On Lee.*"

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[1] Released a few days ago by The University of Chicago Press, as a chapter in The Supreme Court Review, 1968, pp. 133-152, edited by Professor Philip B. Kurland.

I make no prophecy on the future of *On Lee*. Until it is set aside by the Supreme Court, I regard it as controlling and dispositive of the present appeal. I would affirm the judgment of conviction.

A true Copy:

Teste:

____, ____,

Clerk of the United States Court of Appeals for the Seventh Circuit.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

Tuesday, January 7, 1969

Before: Hon. LATHAM CASTLE, Chief Judge, Hon. J. EARL MAJOR, Senior Circuit Judge, *Hon. ELMER J. SCHNACKENBERG, Circuit Judge, Hon. JOHN S. HASTINGS, Circuit Judge, Hon. ROGER J. KILEY, Circuit Judge, Hon. LUTHER M. SWYGERT, Circuit Judge, Hon. THOMAS E. FAIRCHILD, Circuit Judge, Hon. WALTER J. CUMMINGS, Circuit Judge, Hon. OTTO KERNER, Circuit Judge.

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

vs.

JAMES A. WHITE, *Defendant-Appellant.*

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division, on rehearing *en banc.*

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is

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* Although Judge Schnackenberg participated in the en banc rehearing, he died prior to the adoption of this opinion. As author of the prior panel decision of this court, he was of the view that the rationale of Katz v. United States, 389 U.S. 347 (1967) required reversal of White's conviction.

hereby, REVERSED, and that this cause be, and it is hereby REMANDED to the said District Court for a new trial, in accordance with the opinion of this Court filed this day.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1968

No. 1024

UNITED STATES, Petitioner,

v.

JAMES A. WHITE

ORDER ALLOWING CERTIORARI—Filed April 7, 1969.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969—361-664/144